

11 Am. Jur. 2d Bills and Notes Summary

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

[Correlation Table](#)

Summary

Scope:

This article covers those contracts known as bills (now more commonly drafts and checks) and notes for the payment of money, whether negotiable or nonnegotiable, and negotiable instruments from inception to discharge, and the rights and obligations of various parties to such instruments.

The law of commercial paper is now defined by the Uniform Commercial Code, and this title focuses on the version of Article 3 last revised in 2002. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks superseded inconsistent provisions of Article 3, and Article 3 does not apply to treasury notes. This article discusses the federal holder in due course and *D'Oench* and *Duhme* doctrines, which bar certain defenses by the maker of a note against the Federal Deposit Insurance Corporation and its assignees. Also covered is the statutory authority of the Secretary of the United States Treasury to issue checks and other drafts on public money in the Treasury.

Treated Elsewhere:

Alteration of commercial paper, see [Am. Jur. 2d, Alteration of Instruments §§ 1 et seq.](#)

Attachment and garnishment of negotiable instruments, see [Am. Jur. 2d, Attachment and Garnishment §§ 120 to 126](#)

Authority of agent to execute, endorse, and transfer commercial paper, see [Am. Jur. 2d, Agency §§ 138 to 141](#)

Bankruptcy, creditor's presentation of negotiable instrument, and giving of notice of dishonor of the instrument, notwithstanding automatic stay, see [Am. Jur. 2d, Bankruptcy § 1827](#)

Banks, powers and duties of in connection with instruments for payment of money, see [Am. Jur. 2d, Banks and Financial Institutions §§ 1 et seq.](#)

Borrower protection laws, including the Truth in Lending Act, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 1 et seq.](#)

Choice of law by parties to govern transaction that is within the scope of the Uniform Commercial Code, see [Am. Jur. 2d, Commercial Code § 11](#)

Commercial paper, generally, see [Am. Jur. 2d, Bills and Notes §§ 1 et seq.](#)

Conversion of commercial paper, see [Am. Jur. 2d, Conversion §§ 1 et seq.](#)

Corporate stock, promissory notes as consideration for issuance of, see [Am. Jur. 2d, Corporations §§ 413, 414](#)

Electronic Funds Transfer Act, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 193 to 205](#)

Execution on promissory note see [Am. Jur. 2d, Executions and Enforcement of Judgments § 135](#)

False pretenses in obtaining bill or note, see [Am. Jur. 2d, False Pretenses § 36](#)

Gifts of bills and notes, see [Am. Jur. 2d, Gifts §§ 48 to 53](#)

Interest and usury, sale or exchange of commercial paper as usurious, see [Am. Jur. 2d, Interest and Usury §§ 88 to 93](#); discounting as usurious loan, see [Am. Jur. 2d, Interest and Usury §§ 94 to 96](#); commission on sale or discount of bills or notes as usurious, see [Am. Jur. 2d, Interest and Usury § 151](#)

Interest, generally, see [Am. Jur. 2d, Interest and Usury §§ 1 et seq.](#)

Investment securities governed by Article 8 of the Uniform Commercial Code instead of Article 3, see [Am. Jur. 2d, Commercial Code § 68](#)

Larceny, bills or notes as subject of, see [Am. Jur. 2d, Larceny § 61](#)

Money, generally, see [Am. Jur. 2d, Money §§ 1 et seq.](#)

Payment by means of notes, see [Am. Jur. 2d, Payment §§ 41 to 47](#)

Receiver, personal liability for issuance of note without authority, see [Am. Jur. 2d, Receivers § 299](#)

Rent, notes in payment of, see [Am. Jur. 2d, Landlord and Tenant §§ 541, 544, 567](#)

Secured transactions, applicability of provisions of Article 3 of the Uniform Commercial Code to, see [Am. Jur. 2d, Secured Transactions § 11](#); security interest in chattel paper, instruments and the like, see [Am. Jur. 2d, Secured Transactions §§ 38, 45](#); perfection of security interests in negotiable documents, see [Am. Jur. 2d, Secured Transactions § 369](#)

Statute of frauds, applicability to undertakings relating to commercial paper, see [Am. Jur. 2d, Statute of Frauds § 143](#)

Uniform Commercial Code, general provisions of, see [Am. Jur. 2d, Commercial Code §§ 1 et seq.](#)

Uniform Consumer Credit Code, see [Am. Jur. 2d, Consumer and Borrower Protection §§ 305 to 414](#)

War, effect of on bills and notes between subjects of belligerents, see [Am. Jur. 2d, War § 71](#)

Warehouse receipts, negotiability of, see [Am. Jur. 2d, Warehouses §§ 38 to 44](#)

Wills, construction or interpretation of term "notes" as used in, see [Am. Jur. 2d, Wills § 1073](#)

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Bills and Notes

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I. Introduction to Bills and Notes

A. General Concepts of Law Governing Bills and Notes

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes  1, 2, 23, 28, 29, 48.1, 116, 145, 146

A.L.R. Library

A.L.R. Index, Bills and Notes

A.L.R. Index, Checks and Drafts

A.L.R. Index, Uniform Commercial Code

West's A.L.R. Digest, Bills and Notes  1, 2, 23, 28, 29, 48.1, 116, 145, 146

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11 Am. Jur. 2d Bills and Notes § 1

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Bills and Notes

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I. Introduction to Bills and Notes

A. General Concepts of Law Governing Bills and Notes

1. Nature of Bills and Notes

§ 1. Law governing bills and notes

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  1, 2, 28, 29

Bills and notes in their various forms,¹ referenced in modern parlance as drafts, checks, notes, and certificates of deposit, among other forms,² are contractual in nature,³ and may be negotiable or nonnegotiable.⁴

Article 3 of the Uniform Commercial Code (UCC),⁵ governs a note, as a negotiable instrument,⁶ as does the law of contracts, and nonnegotiable instruments, when sufficient as contracts, are also governed by the law of contracts.⁷

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Footnotes

- 1 §§ 12 to 35.
- 2 *Hayes v. Alexander*, 264 Ga. App. 815, 592 S.E.2d 465 (2003).
- 3 § 2.
- 4 §§ 7 et seq.
- 5 U.C.C. §§ 3-101 et seq.
- As to the purpose and scope of Article 3, generally, see §§ 3 to 6.
- 6 § 3.
- 7 § 2.

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11 Am. Jur. 2d Bills and Notes § 2

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I. Introduction to Bills and Notes

A. General Concepts of Law Governing Bills and Notes

1. Nature of Bills and Notes

§ 2. Contractual nature of bills and notes

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  1, 23, 28, 29, 48.1, 116

Bills and notes are contracts.¹ The fundamental rules governing contract law² apply to the determination of the legal questions about those instruments.³

An instrument that is negotiable,⁴ and thereby subject to Article 3 of the Uniform Commercial Code (UCC),⁵ is nonetheless a contract⁶ and a distinct agreement.⁷ A promissory note is a contract,⁸ subject to the law of contracts.⁹ However, between ordinary contracts and negotiable instruments there is the difference between “assignability” and “negotiability.”¹⁰

Nonnegotiable instruments, when sufficient to constitute contracts, are governed by the traditional principles of contract law,¹¹ but not rules applicable solely to negotiable instruments.¹² Nonetheless, Article 3 does not prohibit a court from arriving at a decision regarding the effect of a nonnegotiable instrument because that decision is similar to the result that would follow if the instrument were negotiable.¹³

Reminder:

If a promissory note does not constitute a negotiable instrument, but nonetheless memorializes a debt between the parties that the obligor, through the obligor's signature, acknowledges an obligation to pay, the note is enforceable under traditional principles of contract law.¹⁴

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Footnotes

- 1 [Hayes v. Alexander](#), 264 Ga. App. 815, 592 S.E.2d 465 (2003); [Beneficial Hawaii, Inc. v. Kida](#), 96 Haw. 289, 30 P.3d 895 (2001); [QAD Investors, Inc. v. Kelly](#), 2001 ME 116, 776 A.2d 1244, 46 U.C.C. Rep. Serv. 2d 480 (Me. 2001).
A note is a form of contract. [Seven Oaks Enterprises, L.P. v. Devito](#), 185 Conn. App. 534, 198 A.3d 88, 97 U.C.C. Rep. Serv. 2d 51 (2018), certification denied, 330 Conn. 953, 197 A.3d 893 (2018).
- 2 [Am. Jur. 2d, Contracts](#) §§ 1 et seq.
- 3 [RAL Management, Inc. v. Valley View Associates](#), 102 Conn. App. 678, 926 A.2d 704 (2007); [Blair Const., Inc. v. McBeth](#), 273 Kan. 679, 44 P.3d 1244 (2002); [Briggs v. Briggs](#), 1998 ME 120, 711 A.2d 1286 (Me. 1998); [Santomieri v. Mangen](#), 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018); [EMC Mortg. Corp. v. Davis](#), 167 S.W.3d 406 (Tex. App. Austin 2005).
As to construction of drafts and notes as contracts, see § 103.
- 4 §§ 7 to 11.
- 5 § 3.
- 6 [Bank of America, N.A. v. Ash](#), 2015 OK CIV APP 69, 358 P.3d 951 (Div. 3 2015).
- 7 [Cleveland v. Crown Financial, LLC](#), 183 So. 3d 1206 (Fla. 1st DCA 2016).
- 8 [Reese v. Ellis, Painter, Ratterree & Adams, LLP](#), 678 F.3d 1211 (11th Cir. 2012); [Comsult LLC v. Girdwood Mining Company](#), 397 P.3d 318 (Alaska 2017); [Noroton Properties, LLC v. Lawendy](#), 154 Conn. App. 367, 107 A.3d 980 (2014); [Lewis v. Ikner](#), 349 Ga. App. 21, 825 S.E.2d 443 (2019); [T. Butera Auburn, LLC v. Williams](#), 83 Mass. App. Ct. 496, 986 N.E.2d 404 (2013); [Wells Fargo Bank, N.A. v. Heath](#), 2012 OK 54, 280 P.3d 328 (Okla. 2012); [Hinton v. Nationstar Mortgage LLC](#), 533 S.W.3d 44 (Tex. App. San Antonio 2017).
- 9 [Noroton Properties, LLC v. Lawendy](#), 154 Conn. App. 367, 107 A.3d 980 (2014); [Lewis v. Ikner](#), 349 Ga. App. 21, 825 S.E.2d 443 (2019); [T. Butera Auburn, LLC v. Williams](#), 83 Mass. App. Ct. 496, 986 N.E.2d 404 (2013); [Wells Fargo Bank, N.A. v. Heath](#), 2012 OK 54, 280 P.3d 328 (Okla. 2012).
- 10 § 8.
- 11 [Shlang v. Inbar](#), 149 A.D.3d 1402, 52 N.Y.S.3d 724 (3d Dep't 2017).
Common law applies to nonnegotiable instruments. [Yin v. Society Nat. Bank Indiana](#), 665 N.E.2d 58, 31 U.C.C. Rep. Serv. 2d 168 (Ind. Ct. App. 1996); [Ingram v. Earthman](#), 993 S.W.2d 611, 40 U.C.C. Rep. Serv. 2d 500 (Tenn. Ct. App. 1998).
- 12 [Quality Oil, Inc. v. Kelley Partners, Inc.](#), 657 F.3d 609 (7th Cir. 2011) (Ind. law); [Carmichael v. Higginson](#), 2017 UT App 139, 402 P.3d 146, 93 U.C.C. Rep. Serv. 2d 379 (Utah Ct. App. 2017), cert. denied, 409 P.3d 1047 (Utah 2017).
- 13 [General Motors Acceptance Corp. v. Honest Air Conditioning & Heating, Inc.](#), 933 So. 2d 34 (Fla. 2d DCA 2006).
- 14 [Shlang v. Inbar](#), 149 A.D.3d 1402, 52 N.Y.S.3d 724 (3d Dep't 2017).

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11 Am. Jur. 2d Bills and Notes § 3

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Bills and Notes

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I. Introduction to Bills and Notes

A. General Concepts of Law Governing Bills and Notes

2. Scope and Purpose of U.C.C. Article 3

§ 3. Negotiable instruments subject to U.C.C. Article 3

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  29, 145, 146

Article 3 of the Uniform Commercial Code (UCC) applies to negotiable instruments,¹ and may be cited as “Uniform Commercial Code—Negotiable Instruments.”² The definition of negotiable instrument³ defines the scope of Article 3.⁴ If a note is a negotiable instrument within the meaning of Article 3, it is subject to Article 3⁵ for purposes of its creation, transfer, and enforcement.⁶

The purpose of Article 3 is to enhance the marketability of negotiable instruments and to allow bankers, brokers, and the general public to trade in confidence.⁷ Its chief purpose is “greasing the wheels of commerce” by establishing clear, practical rules governing negotiable instruments, so that subsequent parties, after negotiation of an instrument, know their rights.⁸ Although Article 3 contains much that also governs the relationship between the original parties, it does not attempt to occupy that field to the exclusion of the common law.⁹

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of Article 3 to the extent of the inconsistency.¹⁰

Comment:

Although the terms of Article 3 apply to transactions by Federal Reserve Banks, federal preemption would make ineffective any Article 3 provision that conflicts with federal law. The activities of the Federal Reserve Banks are governed by regulations of the Federal Reserve Board and by operating circulars issued by the Reserve Banks themselves.¹¹

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Footnotes

- 1 [U.C.C. § 3-102\(a\).](#)
[For the applicability of contract law to negotiable instruments, see § 2.](#)
- 2 [U.C.C. § 3-101.](#)
- 3 [§ 7.](#)
- 4 [U.C.C. § 3-104, Official Comment 1.](#)
- 5 [Lewis v. Ikner, 349 Ga. App. 21, 825 S.E.2d 443 \(2019\); Bank of America, N.A. v. Inda, 48 Kan. App. 2d 658, 303 P.3d 696, 80 U.C.C. Rep. Serv. 2d 1 \(2013\); Wells Fargo Bank, N.A. v. Carver, 2016-Ohio-589, 60 N.E.3d 473, 88 U.C.C. Rep. Serv. 2d 1187 \(Ohio Ct. App. 8th Dist. Cuyahoga County 2016\); Wells Fargo Bank, N.A. v. Heath, 2012 OK 54, 280 P.3d 328 \(Okla. 2012\); Note Capital Group, Inc. v. Perretta, 207 A.3d 998 \(R.I. 2019\).](#)
- 6 [DRFP, LLC v. Republica Bolivariana de Venezuela, 945 F. Supp. 2d 890 \(S.D. Ohio 2013\) \(Ohio law\).](#)
- 7 [Preferred Capital, Inc. v. Power Eng. Group, Inc., 163 Ohio App. 3d 522, 2005-Ohio-5113, 839 N.E.2d 416 \(9th Dist. Summit County 2005\), cause dismissed, 109 Ohio St. 3d 1419, 2006-Ohio-1978, 846 N.E.2d 530 \(2006\) and judgment rev'd on other grounds, 112 Ohio St. 3d 429, 2007-Ohio-257, 860 N.E.2d 741, 39 A.L.R.6th 761 \(2007\).](#)
- 8 [Venaglia v. Kropinak, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 \(Ct. App. 1998\).](#)
- 9 [Venaglia v. Kropinak, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 \(Ct. App. 1998\).](#)
- 10 [U.C.C. § 3-102\(c\).](#)
- 11 [U.C.C. § 3-102, Official Comment 3.](#)

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§ 4. Definitions under U.C.C. Article 3

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 1

Article 3 of the Uniform Commercial Code (UCC) provides a definitions section for various terms it uses,¹ and includes cross-references to the definitions of other terms defined elsewhere in Article 3² and in other U.C.C. Articles.³ In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout Article 3.⁴

Article 3 defines the term “instrument” to mean a negotiable instrument⁵ and defines the term “negotiable instrument.”⁶

Other terms defined in Article 3 include—

- “issue,” meaning the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person⁷
- “order,” meaning a written instruction to pay money signed by the person giving the instruction, which may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession; however, an authorization to pay is not an order unless the person authorized to pay is also instructed to pay⁸
- “promise,” meaning a written undertaking to pay money, signed by the person undertaking to pay; an acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation⁹

— “record,” meaning information that is inscribed on a tangible medium or that is stored in an electronic or other medium, and is retrievable in perceivable form¹⁰

— “remotely created consumer item,” meaning an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be that of the drawer¹¹

— “secondary obligor,” meaning an indorser or an accommodation party, a drawer having the obligation described, or any other party to the instrument that has recourse against another party to the instrument¹²

The definitions of certain terms defined in Article 4, referenced as applicable to Article 3,¹³ include:

- “Banking day” meaning the part of a day in which a bank is open to the public for conducting substantially all of its banking functions¹⁴
- “Clearing house” meaning an association of banks or other payors regularly clearing items¹⁵
- “Collecting bank” meaning a bank, except the payor bank, handling an item for collection¹⁶
- “Depository bank” meaning the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter¹⁷
- “Intermediary bank” meaning a bank, except the depository or payor bank, to which an item is transferred in the course of collection¹⁸
- “Payor bank” meaning a bank that is the drawee of a draft¹⁹
- “Documentary draft” meaning a draft to be presented for acceptance or payment if specified documents, certificated securities or instructions for uncertificated securities, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft²⁰
- “Item” meaning an instrument or a promise or order to pay money handled by a bank for collection or payment, but does not include a payment order governed by Article 4A or a credit or debit card slip²¹
- “Suspends payments” meaning that a bank has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business²²

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Footnotes

- | | |
|----|------------------------|
| 1 | U.C.C. § 3-103(a). |
| 2 | U.C.C. § 3-103(b). |
| 3 | U.C.C. § 3-103(c). |
| 4 | U.C.C. § 3-103(d). |
| 5 | U.C.C. § 3-104(b). |
| 6 | § 7. |
| 7 | U.C.C. § 3-105(a). |
| 8 | U.C.C. § 3-103(a)(8). |
| 9 | U.C.C. § 3-103(a)(12). |
| 10 | U.C.C. § 3-103(a)(14). |

11	U.C.C. § 3-103(a)(16).
12	U.C.C. § 3-103(a)(17).
13	U.C.C. § 3-103(c).
14	U.C.C. § 4-104(a)(3).
15	U.C.C. § 4-104(a)(4).
16	U.C.C. § 4-105(5).
17	U.C.C. § 4-105(2).
18	U.C.C. § 4-105(4).
19	U.C.C. § 4-105(3).
20	U.C.C. § 4-104(a)(6).
21	U.C.C. § 4-104(a)(9).
22	U.C.C. § 4-104(a)(12).

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11 Am. Jur. 2d Bills and Notes § 5

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A. General Concepts of Law Governing Bills and Notes

2. Scope and Purpose of U.C.C. Article 3

§ 5. Instruments excluded under U.C.C. Article 3

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 2

Article 3 of the Uniform Commercial Code (UCC) does not apply to money, to payment orders governed by Article 4A, or to securities governed by Article 8.¹ Article 3 is not meant to apply to contracts for the sale of goods or services or the sale or lease of real property or similar writings that may contain a promise to pay money.²

Comment:

The total exclusion from Article 3 of other promises or orders that are not payable to bearer or to order serves a useful purpose—it provides a simple device to clearly exclude a writing that does not fit the pattern of typical negotiable instruments and which is not intended to be a negotiable instrument.³ The definition of “payment order” in U.C.C. § 4A-103(a)(1)(iii) excludes drafts which are governed by Article 3, so this provision plus the specific exclusion in U.C.C. § 3-102(a) of payment orders makes Article 3 and Article 4A mutually exclusive.⁴ Article 3 omits its prior reference to “documents of title” as superfluous, because those documents do not contain a promise to pay money.⁵

Although treasury bills are both negotiable instruments and investment securities, they are not governed by Article 3.⁶ Also, an electronic funds transfer is not within Article 3 because it is not a signed negotiable instrument.⁷

Comment:

Even though an instrument does not come within the scope of Article 3, the parties may, by their agreement, specify that one or more of the provisions of Article 3 determine their rights and obligations under the instrument.⁸

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Footnotes

- 1 U.C.C. § 3-102(a).
- 2 U.C.C. § 3-102, Official Comment 2.
- 3 U.C.C. § 3-102, Official Comment 2.
- 4 U.C.C. § 3-102, Official Comment 2.
- 5 U.C.C. § 3-102, Official Comment 2.
- 6 *Morgan Guar. Trust Co. of New York v. Third Nat. Bank of Hampden County*, 529 F.2d 1141, 18 U.C.C. Rep. Serv. 483 (1st Cir. 1976); *Brannon v. First Nat. Bank of Atlanta*, 137 Ga. App. 275, 223 S.E.2d 473, 19 U.C.C. Rep. Serv. 234 (1976).
As to the exclusion from Article 3 of matters preempted by inconsistent federal law, see § 3.
- 7 *Shawmut Worcester County Bank v. First American Bank & Trust*, 731 F. Supp. 57, 11 U.C.C. Rep. Serv. 2d 417 (D. Mass. 1990).
For the Electronic Funds Transfer Act, see *Am. Jur. 2d, Consumer and Borrower Protection* §§ 193 to 205.
- 8 U.C.C. § 3-104, Official Comment 2.

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11 Am. Jur. 2d Bills and Notes § 6

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§ 6. Relationship of U.C.C. Article 3 to other Articles

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 2

If there is conflict between Article 3 of the Uniform Commercial Code (UCC) and U.C.C. Articles 4 or 9, Articles 4 and 9 govern.¹

Comment:

Occasionally, a particular writing may fit the definition of both a negotiable instrument under Article 3 and of an investment security under Article 8 and, in such cases, the instrument is subject exclusively to the requirements of Article 8.²

Although Article 8 is the sole source of law governing the rights of parties to a transaction involving an investment security, where a particular question concerning an investment security cannot be resolved solely on the basis of the language of Article 8, it is appropriate to look to Article 3 for guidance.³ Article 3 encompasses isolated transactions such as the issuance of a savings certificate by a savings and loan association as part of the financial arrangements for a loan, while Article 8 is directed

to multiple transactions in which a group of promises, all for the same amount and all due at the same time, are made to multiple parties with the intention that the security evidencing those promises will be traded.⁴

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Footnotes

- 1 [U.C.C. § 3-102\(b\)](#).
The provisions of Article 3 on notice of dishonor must be considered in conjunction with the provisions of Article 4 where the question is one of liability as between a depositor (endorser) of a check and the depository bank. [Mercantile Bank & Trust Co. v. Hunter](#), 31 Colo. App. 200, 501 P.2d 486, 11 U.C.C. Rep. Serv. 545 (App. 1972); [Available Iron & Metal Co. v. First Nat. Bank of Blue Island](#), 56 Ill. App. 3d 516, 13 Ill. Dec. 940, 371 N.E.2d 1032, 23 U.C.C. Rep. Serv. 694 (1st Dist. 1977).
- 2 [U.C.C. § 3-102, Official Comment 2](#).
- 3 [E.F. Hutton & Co. v. Manufacturers Nat. Bank of Detroit](#), 259 F. Supp. 513, 3 U.C.C. Rep. Serv. 752 (E.D. Mich. 1966); [Bankhaus Hermann Lampe KG v. Mercantile-Safe Deposit and Trust Co.](#), 466 F. Supp. 1133, 25 U.C.C. Rep. Serv. 1141 (S.D. N.Y. 1979).
- 4 [Jones v. United Sav. and Loan Ass'n](#), 515 S.W.2d 869, 16 U.C.C. Rep. Serv. 179 (Mo. Ct. App. 1974).

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§ 7. Definition and nature of negotiability of bills and notes

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The negotiability of an instrument determines the applicability of Article 3 of the Uniform Commercial Code (UCC) to the instrument,¹ determining the rights and obligations connected to the instrument² from the form of the instrument³ and words of negotiability.⁴

Definition:

Except as otherwise provided with reference to orders,⁵ Article 3 defines a negotiable instrument as an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder, (2) is payable on demand or at a definite time, and (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment; (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.⁶

Reminder:

The definition of negotiable instrument defines the scope of Article 3.⁷

Negotiable instruments are intended to facilitate the rapid flow of commerce by providing certainty and finality in commercial transactions.⁸ Negotiability is a characteristic of such importance to commercial paper that any doubt is resolved against negotiability.⁹ The prime characteristic of a negotiable instrument is that it can be negotiated based on physical delivery and endorsement, and a buyer of the note can rely on its enforcement without resort to additional documentation.¹⁰ Negotiable instruments are recognized as having an intrinsic value, similar to money or other transferrable securities.¹¹ A negotiable instrument, is freely transferable and provides the holder with the right to demand money or bring suit to recover money on the note.¹²

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Footnotes

- 1 § 3.
- 2 U.S. Bank NA as Trustee of Holders of the J.P. Morgan Mortgage Trust 2007-S3 Mortgage Pass-Through Certificates v. Cannella, 64 Misc. 3d 410, 99 N.Y.S.3d 579, 98 U.C.C. Rep. Serv. 2d 745 (Sup 2019).
- 3 § 36.
- 4 § 37.
- 5 U.C.C. § 3-104(c), (d).
- 6 U.C.C. § 3-104(a).
- 7 § 3.
- 8 Pero's Steak and Spaghetti House v. Lee, 90 S.W.3d 614 (Tenn. 2002).
- 9 Jefferson v. Mitchell Select Furniture Co., Inc., 56 Ala. App. 259, 321 So. 2d 216, 18 U.C.C. Rep. Serv. 431 (Civ. App. 1975); Pacific Finance Loans v. Goodwin, 41 Ohio App. 2d 141, 70 Ohio Op. 2d 265, 324 N.E.2d 578, 16 U.C.C. Rep. Serv. 750 (8th Dist. Cuyahoga County 1974); Ingram v. Earthman, 993 S.W.2d 611, 40 U.C.C. Rep. Serv. 2d 500 (Tenn. Ct. App. 1998).
- 10 U.S. Bank NA as Trustee of Holders of the J.P. Morgan Mortgage Trust 2007-S3 Mortgage Pass-Through Certificates v. Cannella, 64 Misc. 3d 410, 99 N.Y.S.3d 579, 98 U.C.C. Rep. Serv. 2d 745 (Sup 2019).
- 11 Harper v. State, 259 Ga. App. 843, 578 S.E.2d 544 (2003).
- 12 Midland Title Sec., Inc. v. Carlson, 171 Ohio App. 3d 678, 2007-Ohio-1980, 872 N.E.2d 968 (8th Dist. Cuyahoga County 2007).

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§ 8. Assignability of bills and notes distinguished from negotiability

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West's Key Number Digest

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For purposes of the definition of a negotiable instrument under Article 3 of the Uniform Commercial Code (UCC),¹ while a negotiable instrument is freely assignable,² the assignability of an instrument does not determine its character as a negotiable instrument, since nonnegotiable instruments may be assigned.³ There is a difference in regard to the rights of a transferee of a negotiable instrument where there is a negotiation and where there is merely an assignment without negotiation.⁴ As a general rule, the assignee of a nonnegotiable instrument takes it with all the rights of the assignor, and subject to all the equities and defenses of the debtor connected with or growing out of the obligation that the obligor had against the assignor at the time of the assignment.⁵ While the nonnegotiable instrument is assignable, like any other contract right, the assignee can never be a holder in due course.⁶ A person taking a negotiable instrument through a holder in due course is afforded the rights and the protection accorded a holder in due course, even where the person taking does so by assignment.⁷ When negotiable commercial paper is negotiated, a person taking the paper as a holder in due course may acquire a better title or rights than the original party had.⁸ Defects in an assignment of a note do not affect the negotiability of a note that is otherwise a negotiable instrument.⁹

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Footnotes

¹ § 7.

- 2 Henson v. Bank of America, 935 F. Supp. 2d 1128 (D. Colo. 2013) (Colo. law); In re Residential Capital, LLC, 524 B.R. 465 (Bankr. S.D. N.Y. 2015) (Ga. law); Bank of America, N.A. v. Gibson, 2014 PA Super 217, 102 A.3d 462 (2014).
Restrictions on assignability defeat negotiability. In re V.O.C. Analytical Laboratories, Inc., TIN: 5-9299 3905, 263 B.R. 156, 46 U.C.C. Rep. Serv. 2d 1129 (S.D. Fla. 2001), aff'd, 31 Fed. Appx. 202 (11th Cir. 2001) (Fla. law).
- 3 OneWest Bank, N.A. v. FMCDH Realty, Inc., 165 A.D.3d 128, 83 N.Y.S.3d 612, 96 U.C.C. Rep. Serv. 2d 999 (2d Dep't 2018); Premier Capital, L.L.C. v. Baker, 2012-Ohio-2834, 972 N.E.2d 1125 (Ohio Ct. App. 11th Dist. Portage County 2012).
- 4 §§ 174 et seq.
- 5 OneWest Bank, FSB v. Nunez, 193 So. 3d 13, 89 U.C.C. Rep. Serv. 2d 37 (Fla. 4th DCA 2016).
- 6 Cadle Co. v. Citizens Nat. Bank, 200 W. Va. 515, 490 S.E.2d 334, 33 U.C.C. Rep. Serv. 2d 891 (1997).
- 7 §§ 224 et seq.
- 8 § 232.
- 9 Bank of America, N.A. v. Gibson, 2014 PA Super 217, 102 A.3d 462 (2014).

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§ 9. Continuance or termination of negotiability of bills and notes

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West's Key Number Digest, Bills and Notes  144, 164

Article 3 of the Uniform Commercial Code (UCC) provides that an indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument,¹ and an indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument.²

Reminder:

Article 3 does away with the absolute concept of pre-Code law under which an indorsee taking a note after maturity could not be a holder in due course.³

Caution:

Conditional or contingent instruments are not negotiable instruments.⁴



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Footnotes

- 1 [U.C.C. § 3-206\(a\)](#).
For a discussion of restrictive indorsements, see [§ 200](#).
- 2 [U.C.C. § 3-206\(b\)](#).
- 3 [§ 260](#).
- 4 [§§ 76 to 78](#).

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§ 10. Requisites of negotiability of bills and notes

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Forms

Forms relating to requisites of negotiability, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that,¹ except as provided with regard to certain checks² and instruments stating that they are not negotiable,³ the term “negotiable instrument” means an unconditional promise or order to pay⁴ a fixed amount of money,⁵ with or without interest or other charges described in the promise or order, if it (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder,⁶ (2) is payable on demand or at a definite time,⁷ and (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, except that the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of an obligor.⁸

The instruments to which the U.C.C. definition of negotiability applies are drafts, checks, certificates of deposit, and notes.⁹ The term “negotiable instrument” is limited to a signed writing.¹⁰ Negotiable paper must be simple, certain, unconditional, and not subject to any contingency.¹¹

Negotiability is a question of law, and a court does not need to find facts to determine whether the instrument before it is a negotiable instrument; the parties' stipulation regarding negotiability is not binding on any court.¹²

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Footnotes

- 1 U.C.C. § 3-104(a).
- 2 § 31.
- 3 § 38.
- 4 §§ 76 et seq.
- 5 §§ 84 et seq.
- 6 § 37.
- 7 §§ 88, 89.
- 8 §§ 94 et seq.
- 9 U.C.C. § 3-104(e) to (j).
As to the definitions of those terms and the applicability of the definition to those instruments, see §§ 12 et seq.
- 10 § 39.
- 11 *General Motors Acceptance Corp. v. Honest Air Conditioning & Heating, Inc.*, 933 So. 2d 34 (Fla. 2d DCA 2006).
As to the effect of conditions or contingencies, see §§ 76 to 78.
- 12 *Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. v. Bailey*, 710 F. Supp. 737, 9 U.C.C. Rep. Serv. 2d 145 (C.D. Cal. 1989); *In re Latin Inv. Corp.*, 156 B.R. 102, 21 U.C.C. Rep. Serv. 2d 135 (Bankr. D. D.C. 1993); *Cartwright v. MBank Corpus Christi, N.A.*, 865 S.W.2d 546 (Tex. App. Corpus Christi 1993), writ denied, (May 4, 1994).

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§ 11. Nonnegotiable instruments distinguished

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West's Key Number Digest, Bills and Notes 144, 148.1

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[Provision in draft or note directing payment "on acceptance" as affecting negotiability, 19 A.L.R.4th 1268](#)

A negotiable instrument is an instrument that meets the requirements specified in Article 3 of the Uniform Commercial Code (UCC) for negotiability,¹ and an instrument that fails to meet those requirements does not qualify as negotiable,² as determined from the form and face of the particular instrument.³

Comment:

A writing that does not meet the requirements of the U.C.C. cannot be made a negotiable instrument within Article 3 by contract or by conduct. However, an order or promise may fail to meet the statutory requirements for negotiability but be similar to a negotiable instrument in many respects, and nothing in Article 3 is intended to mean that a court could not arrive at a result similar to the result that would follow if the writing were a negotiable instrument. It may be appropriate for a court to apply one or more of the

provisions of Article 3 by analogy, taking into account the expectations of the parties and the differences between the writing and an instrument governed by Article 3.⁴

Reminder:

Nonnegotiable instruments are governed by the rules applicable to ordinary contracts, and the common law of bills and notes.⁵

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Footnotes

- 1 § 10.
- 2 *Quality Oil, Inc. v. Kelley Partners, Inc.*, 657 F.3d 609 (7th Cir. 2011) (Ind. law); *General Motors Acceptance Corp. v. Honest Air Conditioning & Heating, Inc.*, 933 So. 2d 34 (Fla. 2d DCA 2006); *N & F Logistic, Inc. v. Cathay Inn Intern., Inc.*, 170 So. 3d 275 (La. Ct. App. 5th Cir. 2015); *LSREF2 Cobalt (TX), LLC v. 410 Centre LLC*, 501 S.W.3d 626 (Tex. App. San Antonio 2016), review denied, (Mar. 10, 2017).
- 3 § 36.
- 4 U.C.C. § 3-104, Official Comment 2.
- 5 § 2.

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§ 12. Commercial paper as negotiable instrument

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West's Key Number Digest, Bills and Notes 148.1

For purposes of the negotiability of an instrument under the requirements of Article 3 of the Uniform Commercial Code (UCC),¹ "commercial paper" references a short-term, high quality instrument.² Qualifying commercial paper is negotiable.³ The U.C.C. encourages the free transfer and negotiability of commercial paper to stimulate financial interdependence.⁴

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Footnotes

¹ §§ 7 to 11.

² *Carlucci v. Han*, 886 F. Supp. 2d 497 (E.D. Va. 2012).

³ *Pemstein v. Stimpson*, 36 Mass. App. Ct. 283, 630 N.E.2d 608, 23 U.C.C. Rep. Serv. 2d 877 (1994); *Partney v. Reed*, 889 S.W.2d 896, 25 U.C.C. Rep. Serv. 2d 154 (Mo. Ct. App. S.D. 1994).
Consumer credit debt does not qualify as commercial paper. *Collins Financial Services v. Vigilante*, 30 Misc. 3d 908, 915 N.Y.S.2d 912 (N.Y. City Civ. Ct. 2011).

⁴ *Preferred Capital, Inc. v. Power Eng. Group, Inc.*, 163 Ohio App. 3d 522, 2005-Ohio-5113, 839 N.E.2d 416 (9th Dist. Summit County 2005), cause dismissed, 109 Ohio St. 3d 1419, 2006-Ohio-1978, 846 N.E.2d 530 (2006) and judgment rev'd on other grounds, 112 Ohio St. 3d 429, 2007-Ohio-257, 860 N.E.2d 741, 39 A.L.R.6th 761 (2007).

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§ 13. Accommodation paper as negotiable instrument

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Article 3 of the Uniform Commercial Code (UCC) does not define the term “accommodation paper” but does defines who is an accommodation party¹ and deals with the contract of an accommodation party and the party's liabilities.² Whether an accommodation instrument is negotiable is determined under Article 3³ or the applicable negotiable instruments law.⁴

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Footnotes

- ¹ §§ 68 et seq.
- ² §§ 420 et seq.
- ³ *Misle v. C.I.R.*, T.C. Memo. 2000-322, T.C.M. (RIA) P 2000-322 (2000) (Neb. law).
- ⁴ *Jenks Hatchery, Inc. v. Elliott*, 252 Or. 25, 448 P.2d 370 (1968).

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§ 14. Investment security as negotiable instrument

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Article 8 of the Uniform Commercial Code (UCC) governs the transfer of investment securities,¹ and Article 3 does not apply to securities covered by Article 8.²

Comment:

This provision of Article 3 conforms to that in Article 8³ that a writing that is a security certificate is governed by Article 8 and not by Article 3, even though it also meets the requirements of Article 3. With respect to some promises or orders to pay money, there may be a question whether the promise or order is an instrument under Article 3 or a certificated security under Article 8. Whether a writing is covered by Article 3 or Article 8 has important consequences, including whether the issuer can treat the registered owner as the owner (as it can under Article 8, while Article 3 instruments are not registered), and the obligations of an indorser. Ordinarily the distinction between instruments and certificated securities in nonbearer form should be relatively clear. The distinction between an instrument and a certificated security in bearer form may be more difficult and will generally lie in the economic functions of the two writings. Since, ordinarily, negotiable instruments will be separate instruments, while certificated securities under Article 8 will be either one of a class or series or by their terms divisible into a class or series, a promissory note in bearer form could come under either Article 3 if it were simply an individual note, or under Article 8 if it were one of a series of notes or divisible into a series. An additional distinction is whether the instrument is of the type commonly dealt in on securities exchanges or markets or commonly recognized as a medium for investment; thus, a check written in bearer form would not be a certificated security. Occasionally, a

particular writing may fit the definition of both a negotiable instrument under Article 3 and of an investment security under Article 8. In such cases, the instrument is subject exclusively to the requirements of Article 8.⁴

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Footnotes

- 1 [Am. Jur. 2d, Commercial Code §§ 68 et seq.](#)
- 2 [U.C.C. § 3-102\(a\).](#)
- 3 [U.C.C. § 8-103\(d\).](#)
- 4 [U.C.C. § 3-102, Official Comment 2.](#)

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§ 15. Security agreement as negotiable instrument

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Negotiable instruments are often secured by collateral security agreements, which are generally regarded as nonnegotiable instruments.¹ Secured transactions are governed by Article 9 of the Uniform Commercial Code (UCC); the provisions of Article 3 dealing with commercial paper are subject to the provisions of Article 9.²

A promissory note containing a security agreement creates separate and distinct rights, the former negotiable and the latter nonnegotiable.³ Where there is a debt secured by a note, which is, in turn, secured by a lien, the note and lien constitute separate obligations.⁴

A retail installment contract and security agreement combined in one instrument is generally not a negotiable instrument.⁵ Similarly, a purchase money security agreement is not a negotiable instrument because it contains a number of promises in addition to an unconditional promise or order to pay a fixed amount.⁶

Observation:

It has been noted that although Article 3 was not intended to apply to a retail installment sale contract, nothing in Article 3 would prevent a court from arriving at a similar result that would follow if it were a negotiable instrument.⁷

A security deed is not a negotiable instrument,⁸ nor is a trust deed executed in connection with a retail installment contract.⁹

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Footnotes

- 1 [Gray v. Suttell & Associates](#), 123 F. Supp. 3d 1283 (E.D. Wash. 2015) (Wash. law); [100 Lakeside Trail Trust v. Bank of America, N.A.](#), 342 Ga. App. 762, 804 S.E.2d 719 (2017).
Where there is a debt secured by a note, which is, in turn, secured by a lien, the note and lien constitute separate obligations. [Aguero v. Ramirez](#), 70 S.W.3d 372, 47 U.C.C. Rep. Serv. 2d 1085 (Tex. App. Corpus Christi 2002).
- 2 [U.C.C. § 3-102\(b\)](#).
As to secured transactions, generally, see [Am. Jur. 2d, Secured Transactions §§ 1 et seq.](#)
- 3 [Gray v. Suttell & Associates](#), 123 F. Supp. 3d 1283 (E.D. Wash. 2015) (Wash. law).
- 4 [Aguero v. Ramirez](#), 70 S.W.3d 372, 47 U.C.C. Rep. Serv. 2d 1085 (Tex. App. Corpus Christi 2002).
- 5 [Jefferson v. Mitchell Select Furniture Co., Inc.](#), 56 Ala. App. 259, 321 So. 2d 216, 18 U.C.C. Rep. Serv. 431 (Civ. App. 1975); [Pacific Finance Loans v. Goodwin](#), 41 Ohio App. 2d 141, 70 Ohio Op. 2d 265, 324 N.E.2d 578, 16 U.C.C. Rep. Serv. 750 (8th Dist. Cuyahoga County 1974); [Wickware v. National Mortg. Corp. of America](#), 1977 OK 181, 570 P.2d 330, 22 U.C.C. Rep. Serv. 720 (Okla. 1977).
- 6 [Gregory Poole Equipment Co. v. Murray](#), 105 N.C. App. 642, 414 S.E.2d 563, 18 U.C.C. Rep. Serv. 2d 1301 (1992); [Jackson v. DeWitt](#), 224 Wis. 2d 877, 592 N.W.2d 262 (Ct. App. 1999).
- 7 [General Motors Acceptance Corp. v. Honest Air Conditioning & Heating, Inc.](#), 933 So. 2d 34 (Fla. 2d DCA 2006).
- 8 [100 Lakeside Trail Trust v. Bank of America, N.A.](#), 342 Ga. App. 762, 804 S.E.2d 719 (2017).
- 9 [Leavings v. Mills](#), 175 S.W.3d 301, 54 U.C.C. Rep. Serv. 2d 678 (Tex. App. Houston 1st Dist. 2004).

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§ 16. Document of title as negotiable instrument

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Under Article 7 of the Uniform Commercial Code (UCC), a document of title is “commodity paper,” as distinguished from “money paper.”¹ Warehouse receipts are not negotiable instruments because they do not evidence an unconditional promise to pay money.²

Observation:

Documents of title were specifically excluded from coverage in the pre-1990 version of Article 3.³ The 1990 version omits the reference to “documents of title” as superfluous because these documents do not contain a promise to pay money.⁴

Footnotes

- 1 [U.C.C. § 7-104](#), Official Comment.
- 2 [In re Julien Co.](#), 141 B.R. 359, 18 U.C.C. Rep. Serv. 2d 871 (Bankr. W.D. Tenn. 1992).
Warehouse receipts governed by Article 7 are discussed in [Am. Jur. 2d, Warehouses §§ 28 et seq.](#)
- 3 [U.C.C. § 3-103\(1\)](#) [1952].
- 4 [U.C.C. § 3-102](#), Official Comment 2.

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11 Am. Jur. 2d Bills and Notes § 17

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Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes


2. Negotiability of Particular Instruments

a. In General

§ 17. Money as negotiable instrument

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[What constitutes “money” within meaning of Uniform Commercial Code, 40 A.L.R.4th 346](#)

Article 3 of the Uniform Commercial Code (UCC) does not apply to money.¹ As used in the UCC, “money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.²

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Footnotes

¹ U.C.C. § 3-102(a).

² U.C.C. § 1-201(b)(24).

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11 Am. Jur. 2d Bills and Notes § 18

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Bills and Notes

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I. Introduction to Bills and Notes

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a. In General

§ 18. Money order as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Under Article 3 of the Uniform Commercial Code (UCC), since “money orders” are sold both by banks and other entities and vary in form, and their form determines how they are treated in Article 3. The most common form of money order sold by banks is that of an ordinary check drawn by the purchaser, except that the amount is machine impressed; that kind of money order is a check under Article 3.¹ The definition of “check” states that an instrument may be a check even though it is described on its face by another term, such as “money order.”² If a money order falls within the definition of a teller's check, the rules applicable to teller's checks apply.³

A bank money order issued by an authorized officer of a bank and directed to another, evidencing the fact that the payee may demand and receive on indorsement and presentation to the bank the amount stated on the face of the instrument, is considered a form of cashier's check; it is paid from the bank's funds, and liability for payment rests solely on the issuing bank.⁴ However, a personal money order sold by a bank to a purchaser is the same as a personal check furnished by the bank for use by its checking account customers and is not an obligation of the bank itself, since a bank official's signature does not appear anywhere on it.⁵ The drawee bank's liability does not arise under a personal money order until the instrument has been accepted for payment.⁶

Caution:

While some states have held that money orders are not primary obligations of the bank because of the lack of a bank official's signature, at least one court has held that the ultimate liability for payment of a money order rests with the issuing bank anyway.⁷

A money order qualifies as a negotiable instrument where it is a financial document containing an unconditional promise or order to pay a fixed amount in money and on demand to the bearer.⁸ Money orders contain an unconditional promise or order to pay, as required for negotiability,⁹ even though they include legends cautioning that they would not be paid if they had been altered or stolen or if an endorsement was missing or forged, since the legends constitute nothing more than a statement of statutory defenses against payment.¹⁰ When the terms of an agreement between the purchaser and drawer on a money order involved defenses to payment, the terms did not constitute conditions precedent to negotiability.¹¹

A writing, to be a negotiable instrument, must be signed.¹² Thus, where a bank issues money orders to its selling agent but does not require an authorizing signature on the money orders before it becomes obligated to pay, the money orders are not negotiable instruments.¹³ However, money orders that contain a preprinted signature located on each instrument indicating an intent that the signature operate as the signature of the “maker or drawer,” and direct a holder to “pay the sum of ____ to the order of ____,” which establishes an “unconditional promise or order to pay,” are negotiable instruments.¹⁴

Postal money orders are subject to federal law;¹⁵ they are issued by the United States government in the exercise of a governmental function and are not negotiable instruments.¹⁶

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Footnotes

- 1 U.C.C. § 3-104, Official Comment 4.
As to the definition of bank money order, generally, see [Am. Jur. 2d, Banks and Financial Institutions § 543](#).
- 2 U.C.C. § 3-104(f).
- 3 U.C.C. § 3-104, Official Comment 4.
Teller's checks are discussed in § 32.
- 4 [Home Bank of Guntersville v. Perpetual Federal Sav. and Loan Ass'n](#), 547 So. 2d 840, 10 U.C.C. Rep. Serv. 2d 879 (Ala. 1989); [Thompson Poultry, Inc. v. First Nat. Bank of York](#), 199 Neb. 8, 255 N.W.2d 856, 22 U.C.C. Rep. Serv. 436 (1977).
- 5 [Graybar Elec. Co., Inc. v. Brookline Trust Co.](#), 1984 Mass. App. Div. 211, 39 U.C.C. Rep. Serv. 1721 (1984); [Berler v. Barclays Bank of New York](#), 82 A.D.2d 437, 442 N.Y.S.2d 54, 32 U.C.C. Rep. Serv. 210 (1st Dep't 1981).
- 6 [Adam Intern. Trading Ltd. v. Manufacturers Hanover Trust Co.](#), 150 A.D.2d 294, 542 N.Y.S.2d 1, 9 U.C.C. Rep. Serv. 2d 1255 (1st Dep't 1989).
- 7 [Center Video Indus. Co., Inc. v. Roadway Package System, Inc.](#), 90 F.3d 185, 29 U.C.C. Rep. Serv. 2d 1239 (7th Cir. 1996).
- 8 [Com. v. Pantalio](#), 2008 PA Super 226, 957 A.2d 1267 (2008).
- 9 § 76.
- 10 [Triffin v. Dillabough](#), 552 Pa. 550, 716 A.2d 605, 36 U.C.C. Rep. Serv. 2d 255 (1998).
As to forgery or an unauthorized indorsement being a defense, see §§ 526 et seq.

- 11 Smith v. Farmers Union Mut. Ins. Co., 2011 MT 216, 361 Mont. 516, 260 P.3d 163, 75 U.C.C. Rep. Serv.
2d 575 (2011).
- 12 § 42.
- 13 Central Bank v. Kaiperm Santa Clara Fed. Credit Union, 191 Cal. App. 3d 186, 236 Cal. Rptr. 262, 3 U.C.C.
Rep. Serv. 2d 1003 (6th Dist. 1987).
- 14 Triffin v. Dillabough, 552 Pa. 550, 716 A.2d 605, 36 U.C.C. Rep. Serv. 2d 255 (1998).
- 15 U.C.C. § 3-104, Official Comment 4.
- 16 Computer Works, Inc. v. CNA Ins. Companies, 757 P.2d 167 (Colo. App. 1988); Rose Check Cashing
Service, Inc. v. Chemical Bank New York Trust Co., 43 Misc. 2d 679, 252 N.Y.S.2d 100 (App. Term 1964);
State v. Entringer, 2001 WI App 157, 246 Wis. 2d 839, 631 N.W.2d 651 (Ct. App. 2001).

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11 Am. Jur. 2d Bills and Notes § 19

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§ 19. Certificate of deposit as negotiable instrument

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A.L.R. Library

[Admissibility of extrinsic evidence to explain or contradict bank deposit slips, deposit entries in passbooks, certificates of deposit, or similar instruments, 42 A.L.R.2d 600](#)

Forms

Forms relating to certificate of deposit, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) defines a “certificate of deposit” as an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay it.¹ A

certificate of deposit is a note of the bank.² Accordingly, certificates of deposit are placed on the same footing as promissory notes³ so far as negotiability is concerned.⁴

An agreement between the parties that a certificate of deposit be nonnegotiable, when clearly and unambiguously shown on the instrument, is valid and effective.⁵ The fact that a certificate of deposit is clearly marked as nontransferable⁶ or nonnegotiable is sufficient to make the certificate, by its term, nonnegotiable,⁷ notwithstanding that the certificate was payable to "order."⁸

By the law of some states, a certificate of deposit may be negotiable or nonnegotiable, depending on the terms.⁹ A certificate of deposit not payable to bearer or to order is not negotiable,¹⁰ and a certificate of deposit is not negotiable where, by its terms, it is assignable only by registration on the books of the bank.¹¹

While the law of some states recognizes certificates of deposits as negotiable instruments subject to Article 3,¹² by the law of other states, certificates of deposit are governed by the law of contracts and are not subject to Article 3 as negotiable instruments,¹³ at least when conspicuously labeled nonnegotiable.¹⁴

Nonnegotiable money market certificates of deposit could not qualify as certificates of deposit under Article 3, because such a certificate had to be an instrument under the Article, which nonnegotiable certificates could not be.¹⁵

An action based on allegations that the defendant used powers of attorney to obtain funds from the plaintiff's certificates of deposit comes under Article 3, rather than Article 4 on bank deposits and collections, where the certificates were payable to the depositors as bearers of the instrument, stated that the entire balance was payable at maturity, and did not include any other undertaking of the issuing bank aside from making payment upon orders.¹⁶

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Footnotes

- 1 U.C.C. § 3-104(j).
- 2 U.C.C. § 3-104(j).
- 3 *Brown v. Mercantile Bank of Poplar Bluff*, 820 S.W.2d 327 (Mo. Ct. App. S.D. 1991).
A bank's "certificate of deposit" payable at issue date is not only a negotiable instrument, it is in effect the promissory note of the issuing bank. *Dallas/Fort Worth Airport Bank v. Dallas Bank & Trust Co.*, 667 S.W.2d 572, 38 U.C.C. Rep. Serv. 902 (Tex. App. Dallas 1984).
- 4 *First Wisconsin Nat. Bank of Milwaukee v. Midland Nat. Bank*, 76 Wis. 2d 662, 251 N.W.2d 829, 21 U.C.C. Rep. Serv. 871 (1977).
- 5 *Holloway v. Wachovia Bank & Trust Co., N.A.*, 333 N.C. 94, 423 S.E.2d 752, 19 U.C.C. Rep. Serv. 2d 1086 (1992).
- 6 *Baker v. First American Nat. Bank*, 111 F. Supp. 2d 799, 43 U.C.C. Rep. Serv. 2d 627 (W.D. La. 2000) (La. law); *Estate of Brown v. Fulp*, 718 S.W.2d 588 (Mo. Ct. App. S.D. 1986).
- 7 *Morgan v. Farmers & Merchants Bank*, 856 So. 2d 811, 49 U.C.C. Rep. Serv. 2d 1019 (Ala. 2003); *Trader v. Comerica Bank*, 293 Mich. App. 210, 809 N.W.2d 429 (2011); *Estate of Harvey v. Luther College*, 802 S.W.2d 585 (Mo. Ct. App. W.D. 1991); *Thompson v. First Citizens Bank & Trust Co.*, 151 N.C. App. 704, 567 S.E.2d 184, 48 U.C.C. Rep. Serv. 2d 209 (2002); *Amarillo Nat. Bank v. Dilday*, 693 S.W.2d 38, 41 U.C.C. Rep. Serv. 1326, 58 A.L.R.4th 623 (Tex. App. Amarillo 1985); *Cadle Co. v. Citizens Nat. Bank*, 200 W. Va. 515, 490 S.E.2d 334, 33 U.C.C. Rep. Serv. 2d 891 (1997).
As to the effect of notice that the instrument is not negotiable, see § 38.
- 8 *Amarillo Nat. Bank v. Dilday*, 693 S.W.2d 38, 41 U.C.C. Rep. Serv. 1326, 58 A.L.R.4th 623 (Tex. App. Amarillo 1985).

- 9 Farmers Bank & Trust Co. v. Brazell, 902 S.W.2d 830, 27 U.C.C. Rep. Serv. 2d 912 (Ky. Ct. App. 1995) (negotiable); Swift v. Norwest Bank—Omaha West, 285 Neb. 619, 828 N.W.2d 755, 80 U.C.C. Rep. Serv. 2d 460 (2013) (nonnegotiable); Holloway v. Wachovia Bank & Trust Co., N.A., 333 N.C. 94, 423 S.E.2d 752, 19 U.C.C. Rep. Serv. 2d 1086 (1992) (nonnegotiable).
- The negotiability of a certificate of deposit depends on its compliance with the UCC. Skiles v. Security State Bank, 1 Neb. App. 360, 494 N.W.2d 355, 20 U.C.C. Rep. Serv. 2d 512 (1992) (nonnegotiable).
- 10 Morgan v. Farmers & Merchants Bank, 856 So. 2d 811, 49 U.C.C. Rep. Serv. 2d 1019 (Ala. 2003); Swift v. Norwest Bank—Omaha West, 285 Neb. 619, 828 N.W.2d 755, 80 U.C.C. Rep. Serv. 2d 460 (2013).
- As to the need for words of negotiability, see § 37.
- 11 Holloway v. Wachovia Bank & Trust Co., N.A., 333 N.C. 94, 423 S.E.2d 752, 19 U.C.C. Rep. Serv. 2d 1086 (1992).
- 12 In re Alabama Land and Mineral Corp., 292 F.3d 1319, 48 U.C.C. Rep. Serv. 2d 379 (11th Cir. 2002) (Ky. law); In re Breeding, 366 B.R. 21 (Bankr. E.D. Ark. 2007); In re Tessendorf, 449 B.R. 793 (Bankr. D. Kan. 2011) (Kan. law).
- 13 Epperson v. SOUTHBANK, 93 So. 3d 10 (Miss. 2012).
- 14 Trader v. Comerica Bank, 293 Mich. App. 210, 809 N.W.2d 429 (2011); Thompson v. First Citizens Bank & Trust Co., 151 N.C. App. 704, 567 S.E.2d 184, 48 U.C.C. Rep. Serv. 2d 209 (2002).
- 15 Morgan v. Farmers & Merchants Bank, 856 So. 2d 811, 49 U.C.C. Rep. Serv. 2d 1019 (Ala. 2003).
- 16 Schall v. Gilbert, 169 Vt. 627, 741 A.2d 286, 42 U.C.C. Rep. Serv. 2d 502 (1999).

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11 Am. Jur. 2d Bills and Notes § 20

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§ 20. Bond as negotiable instrument

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West's Key Number Digest, Bills and Notes 150(1)

Bonds are generally considered investment securities, and not negotiable notes under Article 3 of the Uniform Commercial Code (UCC).¹ A debenture that does not specify the exact due date, and which is therefore not payable on demand, is not a negotiable instrument.²

A "guarantee bond," issued by a surety to a loan broker "and/or assigns," is not a negotiable instrument when it is not payable to order or bearer, and the amount to be paid varies according to date on which loan is made.³

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Footnotes

- ¹ § 14.
- ² *Stoerger v. Ivesdale Co-op. Grain Co.*, 15 Ill. App. 3d 313, 304 N.E.2d 300, 13 U.C.C. Rep. Serv. 914 (4th Dist. 1973).
- ³ *Cobb Bank & Trust Co. v. American Mfrs. Mut. Ins. Co.*, 624 F.2d 722, 29 U.C.C. Rep. Serv. 1305 (5th Cir. 1980) (Ga. law).

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11 Am. Jur. 2d Bills and Notes § 21

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§ 21. Warrant of government body as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  149, 151

Warrants are orders issued by an officer of a political subdivision, whose duty it is to transmit claims to the treasurer to pay a specified amount from the treasury for the persons and purposes specified.¹ Since Article 3 of the Uniform Commercial Code (UCC) provides that a promise or order is not conditional notwithstanding that payment may be limited to resort to a particular fund or source,² warrants of governmental agencies or units are negotiable if they are in negotiable form.³ A document entitled a bonded bill of exchange, purporting to be redeemable when mailed to the State Secretary of Treasury, was not a negotiable instrument, when not made payable to bearer or to order, and not drawn on a bank; the sources identified in the document as giving rise to Secretary's obligation to honor the document did not in fact create such an obligation.⁴

By some authority, warrants issued by an agency of government are nonnegotiable, making school district warrants⁵ and state treasury warrants nonnegotiable instruments under Article 3.⁶

In some jurisdictions, there is authority that warrants have always been nonnegotiable under state law and that the adoption of the U.C.C. was not intended to change that fact.⁷

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Footnotes

1 Wyatt v. State, 257 Ala. 90, 57 So. 2d 366 (1952); State v. Family Bank of Hallandale, 623 So. 2d 474, 20
U.C.C. Rep. Serv. 2d 1273 (Fla. 1993).
2 § 78.
3 National Bank of Alaska v. Univentures, 824 P.2d 1377, 17 U.C.C. Rep. Serv. 2d 482 (Alaska 1992) (a
state treasury warrant is a negotiable instrument as long as it meets the test of negotiability in the UCC,
without regard to the fact that the warrant does not fit within one of the categories of instruments listed
under current UCC); St. James Bank & Trust Co. v. Board of Com'rs, Pontchartrain Levee Dist., 354 So.
2d 233 (La. Ct. App. 4th Cir. 1978) (an unconditional promise to pay contained in a warrant issued by a
governmental levee district renders the warrant negotiable); Sanitary and Improvement Dist. No. 32 of Sarpy
County v. Continental Western Corp., 215 Neb. 843, 343 N.W.2d 314, 38 U.C.C. Rep. Serv. 516 (1983)
(improvement warrants issued by a sanitary and improvement district were negotiable instruments when
they were in writing, signed by the district as maker and payable to order).
4 U.S. Bank, N.A. v. Phillips, 366 Ill. App. 3d 593, 304 Ill. Dec. 130, 852 N.E.2d 380, 60 U.C.C. Rep. Serv.
2d 244 (1st Dist. 2006).
5 First Bank & Trust Co., Booker v. Dumas Independent School Dist., Dumas, 527 S.W.2d 499 (Tex. Civ.
App. Waco 1975), writ refused n.r.e., (Jan. 7, 1976).
6 State v. Family Bank of Hallandale, 623 So. 2d 474, 20 U.C.C. Rep. Serv. 2d 1273 (Fla. 1993).
7 People v. Norwood, 26 Cal. App. 3d 148, 103 Cal. Rptr. 7, 11 U.C.C. Rep. Serv. 118 (2d Dist. 1972); State
v. Family Bank of Hallandale, 623 So. 2d 474, 20 U.C.C. Rep. Serv. 2d 1273 (Fla. 1993).

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§ 22. Letter of credit as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Under Article 3 of the Uniform Commercial Code (UCC), a letter of credit is not in itself a negotiable instrument¹ although a draft presented under it may be.²

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Footnotes

- ¹ [Bank of China v. Chan](#), 937 F.2d 780, 15 U.C.C. Rep. Serv. 2d 162 (2d Cir. 1991) (N.Y. law); [Williams v. Sandman](#), 187 F.3d 379, 39 U.C.C. Rep. Serv. 2d 591 (4th Cir. 1999) (S.C. law); [Consolidated Aluminum Corp. v. Bank of Virginia](#), 704 F.2d 136, 1 U.C.C. Rep. Serv. 2d 193 (4th Cir. 1983); [Shaffer v. Brooklyn Park Garden Apartments](#), 311 Minn. 452, 250 N.W.2d 172, 20 U.C.C. Rep. Serv. 1269 (1977); [Heritage Housing Corp. v. Ferguson](#), 651 S.W.2d 272, 37 U.C.C. Rep. Serv. 158 (Tex. App. Dallas 1983). Letters of credit are generally discussed in [Am. Jur. 2d, Letters of Credit](#) §§ 1 et seq.
- ² [Consolidated Aluminum Corp. v. Bank of Virginia](#), 704 F.2d 136, 1 U.C.C. Rep. Serv. 2d 193 (4th Cir. 1983); [Scarsdale Nat. Bank and Trust Co. v. Toronto-Dominion Bank](#), 533 F. Supp. 378, 33 U.C.C. Rep. Serv. 996 (S.D. N.Y. 1982); [Shaffer v. Brooklyn Park Garden Apartments](#), 311 Minn. 452, 250 N.W.2d 172, 20 U.C.C. Rep. Serv. 1269 (1977); [Heritage Housing Corp. v. Ferguson](#), 651 S.W.2d 272, 37 U.C.C. Rep. Serv. 158 (Tex. App. Dallas 1983).

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11 Am. Jur. 2d Bills and Notes § 23

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§ 23. Mortgages, conditional sales contracts, and other sales contracts as negotiable instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 148.1, 167

Under Article 3 of the Uniform Commercial Code (UCC), a mortgage¹ or deed of trust is not a negotiable instrument,² even though it may secure a negotiable instrument, because it does not contain an unconditional promise or order to pay a fixed amount.³ An adjustable rate reverse mortgage is not a negotiable instrument, when it creates an open-ended line of credit between the lender and the borrower.⁴

Observation:

While a mortgage itself is not negotiable, a mortgage given to secure a negotiable instrument, when in the hands of a holder in due course, may share the same immunity to defenses as the note itself.⁵

A modification agreement going to the terms of an original note and mortgage is not a negotiable instrument, absent an unconditional promise to pay fixed amount of money to the bearer of the note, instead stating that it "amends and supplements" the mortgage and note, and that the mortgagors are to comply with all other covenants, agreements, and requirements of the mortgage.⁶

Under Article 3, conditional sales contracts are not negotiable instruments.⁷ An agreement for the sale of a commercial establishment is not a negotiable instrument because it is not payable to order or to bearer.⁸

Retail sales contracts are not negotiable instruments;⁹ a retail installment contract for improvements on a home is not a negotiable instrument, where it does not contain an unconditional promise to pay a fixed amount in money without any other promise or obligation.¹⁰

Personal performance contracts are not negotiable instruments, when lacking an unconditional promise to pay a fixed amount of money, requiring actions other than the payment of money, and not payable to bearer or to order.¹¹

A loan-and-supply contract is not a negotiable instrument, absent compliance with the governing U.C.C. provision on negotiable instruments.¹²

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Footnotes

- 1 [Lassiter v. Resolution Trust Corp.](#), 610 So. 2d 531 (Fla. 5th DCA 1992); [OneWest Bank, N.A. v. FMCDH Realty, Inc.](#), 165 A.D.3d 128, 83 N.Y.S.3d 612, 96 U.C.C. Rep. Serv. 2d 999 (2d Dep't 2018).
- 2 [Christie v. Bank of New York Mellon, N.A.](#), 617 Fed. Appx. 680 (9th Cir. 2015) (Calif. law).
- 3 [Keesling v. T.E.K. Partners, LLC](#), 861 N.E.2d 1246 (Ind. Ct. App. 2007); [First Commonwealth Bank of Prestonsburg v. West](#), 55 S.W.3d 829 (Ky. Ct. App. 2000); [Mox v. Jordan](#), 186 Mich. App. 42, 463 N.W.2d 114, 13 U.C.C. Rep. Serv. 2d 770 (1990).
A "promissory note" is merely a promise to pay—it is not security; a "deed of trust" provides security to back a promise to pay and can be foreclosed after a default on the note. [Washington State Dept. of Revenue v. Security Pacific Bank of Washington N.A.](#), 109 Wash. App. 795, 38 P.3d 354 (Div. 2 2002).
- 4 [OneWest Bank, N.A. v. FMCDH Realty, Inc.](#), 165 A.D.3d 128, 83 N.Y.S.3d 612, 96 U.C.C. Rep. Serv. 2d 999 (2d Dep't 2018).
- 5 [Lassiter v. Resolution Trust Corp.](#), 610 So. 2d 531 (Fla. 5th DCA 1992).
- 6 [Bank of New York Mellon v. Rogers](#), 2016 IL App (2d) 150712, 407 Ill. Dec. 365, 63 N.E.3d 289, 90 U.C.C. Rep. Serv. 2d 752 (App. Ct. 2d Dist. 2016).
- 7 [Universal C.I.T. Credit Corp. v. Hudgens](#), 234 Ark. 668, 234 Ark. 1127, 356 S.W.2d 658 (1962); [Enterprises, Inc. v. Becker](#), 36 Conn. Supp. 213, 416 A.2d 183 (Super. Ct. 1980); [Commerce Acceptance of Oklahoma City, Inc. v. Henderson](#), 1968 OK 137, 446 P.2d 297 (Okla. 1968); [Northwestern Bank v. Neal](#), 271 S.C. 544, 248 S.E.2d 585, 25 U.C.C. Rep. Serv. 487 (1978); [General Motors Acceptance Corp. v. Deweese](#), 1 U.C.C. Rep. Serv. 204 (Tenn. Ct. App. 1963).
- 8 [Mauricio v. Mendez](#), 723 S.W.2d 296, 4 U.C.C. Rep. Serv. 2d 1106 (Tex. App. San Antonio 1987) (holding that although the writing could be considered a nonnegotiable note since it contained an unconditional promise to pay at least a certain sum of money each month, the defendant's liability on the instrument was governed by the law of contracts, not the law of negotiable instruments).
- 9 [General Motors Acceptance Corp. v. Honest Air Conditioning & Heating, Inc.](#), 933 So. 2d 34 (Fla. 2d DCA 2006).
- 10 [Insurance Agency Managers v. Gonzales](#), 578 S.W.2d 803, 25 U.C.C. Rep. Serv. 754 (Tex. Civ. App. Houston 1st Dist. 1979).
- 11 [Stancik v. Hersch](#), 2012-Ohio-1955, 2012 WL 1567213 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012).

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[Quality Oil, Inc. v. Kelley Partners, Inc., 657 F.3d 609 \(7th Cir. 2011\)](#) (Ind. law).

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11 Am. Jur. 2d Bills and Notes § 24

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Bills and Notes

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes

2. Negotiability of Particular Instruments

a. In General

§ 24. Other documents as negotiable instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  148.1, 151

The requisites for the negotiability of instruments under Article 3 of the Uniform Commercial Code (UCC),¹ preclude the negotiability of miscellaneous papers or documents, such as airline tickets,² credit card charge slips,³ credit card applications,⁴ a court order into which an underlying obligation was converted,⁵ leases,⁶ guaranty agreements,⁷ indemnity agreements,⁸ state lottery tickets,⁹ and pawn tickets issued in the name of the pawner.¹⁰

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Footnotes

- ¹ §§ 7 to 11.
- ² *Swiss Air Transport Co., Ltd. v. Benn*, 121 Misc. 2d 129, 467 N.Y.S.2d 341, 37 U.C.C. Rep. Serv. 404 (N.Y. City Civ. Ct. 1983), judgment rev'd on other grounds, 128 Misc. 2d 657, 494 N.Y.S.2d 781 (App. Term 1985).
- ³ *Lincoln First Bank, N.A. v. Carlson*, 103 Misc. 2d 467, 426 N.Y.S.2d 433 (Sup 1980); *First Nat. Bank of Findlay v. Fulk*, 57 Ohio App. 3d 44, 566 N.E.2d 1270, 13 U.C.C. Rep. Serv. 2d 1134 (3d Dist. Hancock County 1989).
- ⁴ *Burris v. Jacobson, Inc.*, 417 So. 2d 787, 34 U.C.C. Rep. Serv. 939 (Fla. 5th DCA 1982).
- ⁵ *U.S. Bank Nat. Ass'n v. Whitney*, 119 Wash. App. 339, 81 P.3d 135, 52 U.C.C. Rep. Serv. 2d 1 (Div. 3 2003).
- ⁶ *Ford Motor Credit Co. v. Sullivan*, 170 Ga. App. 718, 318 S.E.2d 188 (1984); *T.F. James Co. v. Vakoch*, 2001 ND 112, 628 N.W.2d 298 (N.D. 2001); *Northern Ohio Tractor, Inc. v. Richardson*, 8 Ohio App. 3d 171, 456 N.E.2d 824 (9th Dist. Summit County 1982).

- 7 Marriott Intern., Inc. v. deCelle, 722 So. 2d 760 (Ala. 1998); Federal Deposit Ins. Corp. v. Coleman, 795 S.W.2d 706, 11 U.C.C. Rep. Serv. 2d 1075 (Tex. 1990); Gregoire v. Lowndes Bank, 176 W. Va. 296, 342 S.E.2d 264, 1 U.C.C. Rep. Serv. 2d 152 (1986).
- 8 McWilliams v. Gilbert, 715 S.W.2d 761 (Tex. App. Houston 1st Dist. 1986).
- 9 Ramirez v. Bureau of State Lottery, 186 Mich. App. 275, 463 N.W.2d 245, 13 U.C.C. Rep. Serv. 2d 827 (1990).
- 10 Shepps v. Kachel, 24 Misc. 2d 124, 203 N.Y.S.2d 983 (Sup 1960).

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11 Am. Jur. 2d Bills and Notes § 25

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Bills and Notes

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes


2. Negotiability of Particular Instruments

b. Draft as Negotiable Instrument

§ 25. Definition and nature of draft as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 1, 149

Forms

Forms relating to forms of drafts, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Forms relating to negotiability of draft, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC), defines a “draft” as an instrument that is an order, adding that, if an instrument falls within the definition of both “note” and “draft,” a person entitled to enforce the instrument may treat it as either.¹ A “draft” is an instrument executed by one party instructing a second party to pay certain amount of money to a third party,² payable on demand or at a definite time, and to order or bearer.³

A draft may qualify as a negotiable instrument,⁴ subject to the test for negotiability, and may be nonnegotiable if not payable to the bearer on demand⁵ unconditionally, without additional instructions.⁶ The use of the term “draft,” standing alone, implies neither the attribute of negotiability nor its absence.⁷

The term “draft” includes a check,⁸ although not all drafts are checks.⁹ A draft is distinguishable from a check by fact that drawee of check is a bank, while drawee of a draft may be any person or firm, but rules as to payment apply by either means.¹⁰

The payor does not have an obligation to a holder or indorsee until the draft is accepted by the payor.¹¹ Payment to the indorsee of a draft by the holder of the subsequently dishonored draft before the maker had opportunity to accept or reject the draft did not constitute a defense to holder's suit on the draft against the maker.¹²

Reminder:

The status of drafts is also subject to Article 4, governing bank deposits and collections.¹³

A "documentary draft" is either any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against the honor of the draft, or one honor of which is conditioned on presentation of the document or documents.¹⁴

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Footnotes

- 1 U.C.C. § 3-104(e).
- 2 *Lawyers Sur. Corp. v. Royal Chevrolet, Inc.*, 847 S.W.2d 624 (Tex. App. Texarkana 1993), writ denied, (June 30, 1993).
- 3 *People v. Norwood*, 26 Cal. App. 3d 148, 103 Cal. Rptr. 7, 11 U.C.C. Rep. Serv. 118 (2d Dist. 1972).
- 4 *Morrison v. Shanwick Intern. Corp.*, 167 Ariz. 39, 804 P.2d 768 (Ct. App. Div. 1 1990); *Canal Ins. Co. v. First Nat. Bank of Ft. Smith*, 268 Ark. 356, 596 S.W.2d 709, 28 U.C.C. Rep. Serv. 1063 (1980); *Lenares v. Miano*, 74 Conn. App. 324, 811 A.2d 738, 49 U.C.C. Rep. Serv. 2d 843 (2002); *Shaffer v. Brooklyn Park Garden Apartments*, 311 Minn. 452, 250 N.W.2d 172, 20 U.C.C. Rep. Serv. 1269 (1977); *UAW-CIO Local No. 31 Credit Union v. Royal Ins. Co., Ltd.*, 594 S.W.2d 276, 28 U.C.C. Rep. Serv. 1435 (Mo. 1980); *Shannon v. Sunwest Bank of Albuquerque, N.A.*, 1994-NMSC-124, 118 N.M. 749, 887 P.2d 285, 25 U.C.C. Rep. Serv. 2d 868 (1994); *Travis Bank & Trust v. State*, 660 S.W.2d 851, 38 U.C.C. Rep. Serv. 300 (Tex. App. Austin 1983).
- 5 *Universal Premium Acceptance Corp. v. York Bank & Trust Co.*, 69 F.3d 695, 28 U.C.C. Rep. Serv. 2d 1 (3d Cir. 1995) (Pa. law).
- 6 *Bounty Trading Corp. v. S. E. K. Sportswear, Ltd.*, 48 A.D.2d 811, 370 N.Y.S.2d 4, 17 U.C.C. Rep. Serv. 797 (1st Dep't 1975).
- 7 *Travis Bank & Trust v. State*, 660 S.W.2d 851, 38 U.C.C. Rep. Serv. 300 (Tex. App. Austin 1983).
- 8 §§ 31 et seq.
- 9 *Universal Premium Acceptance Corp. v. York Bank & Trust Co.*, 69 F.3d 695, 28 U.C.C. Rep. Serv. 2d 1 (3d Cir. 1995) (Pa. law); *Morrison v. Shanwick Intern. Corp.*, 167 Ariz. 39, 804 P.2d 768 (Ct. App. Div. 1 1990); *Sizemore v. E. T. Barwick Industries, Inc.*, 225 Tenn. 226, 465 S.W.2d 873 (1971).
- 10 *Sizemore v. E. T. Barwick Industries, Inc.*, 225 Tenn. 226, 465 S.W.2d 873 (1971).

- 11 [Bank of America v. Security Pacific Nat. Bank](#), 23 Cal. App. 3d 638, 100 Cal. Rptr. 438 (5th Dist. 1972).
Acceptance is discussed in §§ 333 et seq.
- 12 [UAW-CIO Local No. 31 Credit Union v. Royal Ins. Co., Ltd.](#), 594 S.W.2d 276, 28 U.C.C. Rep. Serv. 1435
(Mo. 1980).
- 13 [Universal Premium Acceptance Corp. v. York Bank & Trust Co.](#), 69 F.3d 695, 28 U.C.C. Rep. Serv. 2d 1
(3d Cir. 1995) (Pa. law).
- 14 [Shannon v. Sunwest Bank of Albuquerque, N.A.](#), 1994-NMSC-124, 118 N.M. 749, 887 P.2d 285, 25 U.C.C.
Rep. Serv. 2d 868 (1994).

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11 Am. Jur. 2d Bills and Notes § 26

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Bills and Notes

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes


2. Negotiability of Particular Instruments

b. Draft as Negotiable Instrument

§ 26. Bill of exchange as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 1, 149

Under Article 3 of the Uniform Commercial Code (UCC), defining a "draft,"¹ a bill of exchange is a signed written order drawn by one person on another to pay a third person a certain sum of money, absolutely and in all events.²

Comment:

The term "bill of exchange" was equated with "draft" in the prior version of Article 3, and, while this term was removed in the 1990 revision, it is still recognized that "bill of exchange" is generally understood to be a synonym for "draft."³

A document entitled a "bonded bill of exchange," which purported to be redeemable by being mailed to the Secretary of Treasury, was not a negotiable instrument, and thus a mortgagor's tender of the document did not discharge the mortgagor's obligations

or preclude the mortgagee from conducting a foreclosure sale, where the document was not made payable to bearer or to order, was not drawn on a bank, and did not in fact create an obligation against the Treasury.⁴

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Footnotes

- 1 § 25.
- 2 *Garden Check Cashing Service, Inc. v. First Nat. City Bank*, 25 A.D.2d 137, 267 N.Y.S.2d 698, 3 U.C.C. Rep. Serv. 355 (1st Dep't 1966), order aff'd, 18 N.Y.2d 941, 277 N.Y.S.2d 141, 223 N.E.2d 566, 4 U.C.C. Rep. Serv. 322 (1966); *Travis Bank & Trust v. State*, 660 S.W.2d 851, 38 U.C.C. Rep. Serv. 300 (Tex. App. Austin 1983).
- 3 U.C.C. § 3-104, Official Comment 4.
"Draft" is a common synonym for "bill of exchange." *Travis Bank & Trust v. State*, 660 S.W.2d 851, 38 U.C.C. Rep. Serv. 300 (Tex. App. Austin 1983).
A "sight draft" is a bill of exchange for the immediate collection of money. *United Ben. Fire Ins. Co. v. First Nat. Bank of Ariz., Phoenix*, 1 Ariz. App. 550, 405 P.2d 488 (1965).
A "draft" is a bill of exchange drawn by one person upon another ordering payment of money. *Chilton Air Cooled Engines, Inc. v. First Citizens Bank of Hohenwald*, 726 S.W.2d 526 (Tenn. Ct. App. 1986).
- 4 *McElroy v. Chase Manhattan Mortgage Corp.*, 134 Cal. App. 4th 388, 36 Cal. Rptr. 3d 176 (4th Dist. 2005); *U.S. Bank, N.A. v. Phillips*, 366 Ill. App. 3d 593, 304 Ill. Dec. 130, 852 N.E.2d 380, 60 U.C.C. Rep. Serv. 2d 244 (1st Dist. 2006).

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11 Am. Jur. 2d Bills and Notes § 27

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Bills and Notes

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes


2. Negotiability of Particular Instruments

b. Draft as Negotiable Instrument

§ 27. Trade acceptance as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 149

Forms

Forms relating to trade acceptance or specific collateral as security, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), defining a "draft,"¹ a trade acceptance is a draft drawn by the seller on the purchaser of goods sold, and accepted by that purchaser.² Its purpose is to make the book account liquid and to permit the seller to raise money on it before it is due under the terms of the sale; it is ordinarily turned into cash by the seller through indorsement and discount, and the situation is substantially the same as if the buyer had given the seller a promissory note.³ A trade acceptance in usual form is a negotiable instrument.⁴ The mere fact that a trade acceptance contains matter other than an order for the payment of money does not necessarily render the instrument nonnegotiable, unless the obligation of the instrument is rendered conditional by the other matter.⁵

Footnotes

- 1 § 25.
- 2 National Bank of North America v. Beinhorn, 10 U.C.C. Rep. Serv. 847 (N.Y. Sup 1972).
- 3 State Trading Corp. v. Jordan, 146 Pa. Super. 166, 22 A.2d 30 (1941).
- 4 Federal Factors, Inc. v. Wellbanke, 241 Ark. 44, 406 S.W.2d 712, 3 U.C.C. Rep. Serv. 813 (1966); National Bank of North America v. Beinhorn, 10 U.C.C. Rep. Serv. 847 (N.Y. Sup 1972).
- 5 First Nat. Bank v. Blackman, 249 N.Y. 322, 164 N.E. 113 (1928).

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11 Am. Jur. 2d Bills and Notes § 28

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes


2. Negotiability of Particular Instruments

b. Draft as Negotiable Instrument

§ 28. Other types of drafts negotiable instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 149

Forms

Forms relating to sight drafts and payable through drafts, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Under Article 3 of the Uniform Commercial Code (UCC), defining a "draft,"¹ a bank draft is merely an instrument of one bank drawing on its deposits with another bank.²

A sight draft is forwarded in commercial transactions to insure that payment will occur on or before the delivery of goods; it is a document written by the seller to be paid to the order of the seller, with the buyer as the drawee; it is not, therefore, an ordinary draft.³ A sight draft is a draft that is payable on demand.⁴

Caution:

Some insurance companies follow the practice of issuing drafts in which the drawer draws on itself and makes the draft payable at or through a bank. These instruments are treated as drafts.⁵

A “payable through” draft must be clearly indicated as such by the word(s) “through” or “payable through” appearing before the name of the collecting bank through which the draft is payable.⁶ However, an instrument that states that it is “payable through” a bank does not of itself authorize the bank to pay the instrument out of the drawer's account.⁷

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Footnotes

- 1 § 25.
- 2 *Perry v. West*, 110 N.H. 351, 266 A.2d 849, 7 U.C.C. Rep. Serv. 1157 (1970).
- 3 *McCollum Aviation, Inc. v. CIM Associates, Inc.*, 446 F. Supp. 511, 26 U.C.C. Rep. Serv. 1072 (S.D. Fla. 1978).
- 4 *Temple-Eastex Inc. v. Addison Bank*, 672 S.W.2d 793, 38 U.C.C. Rep. Serv. 971 (Tex. 1984).
- 5 U.C.C. § 3-103, Official Comment 2.
- 6 *Aetna Cas. & Sur. Co. v. Fennessey*, 37 Mass. App. Ct. 668, 642 N.E.2d 1050, 25 U.C.C. Rep. Serv. 2d 477 (1994).
- 7 *People v. Burke*, 38 Cal. App. 3d 708, 113 Cal. Rptr. 553, 14 U.C.C. Rep. Serv. 976 (1st Dist. 1974).

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11 Am. Jur. 2d Bills and Notes § 29

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Bills and Notes

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes

2. Negotiability of Particular Instruments

c. Note as Negotiable Instrument

§ 29. Definition and nature of note as negotiable instrument; promissory note

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 28, 150(1)

Forms

Forms relating to promissory notes, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code [[Westlaw®\(r\) Search Query](#)]

Under Article 3 of the Uniform Commercial Code (UCC), defining a "note," a note is a promise to pay.¹ Notes² or promissory notes meeting the Article 3 requisites of a negotiable instrument³ are negotiable and governed by Article 3.⁴

A note⁵ or promissory note is a written promise by the maker to pay the amount specified to the payee named in the note.⁶ A note⁷ or promissory note is a written contract for the payment of money,⁸ or a contract evincing an obligation to pay money,⁹ unconditionally.¹⁰

A promissory note may be nonnegotiable if not couched in proper terms,¹¹ as may require a conspicuous statement that it is not negotiable.¹²

Footnotes

- 1 U.C.C. § 3-104(e).
- 2 *Smalls v. Wells Fargo Bank, N.A.*, 180 So. 3d 910 (Ala. Civ. App. 2015); *Bank of America, N.A. v. Inda*, 48 Kan. App. 2d 658, 303 P.3d 696, 80 U.C.C. Rep. Serv. 2d 1 (2013); *MorEquity, Inc. v. Gombita*, 2018-Ohio-4860, 125 N.E.3d 300 (Ohio Ct. App. 8th Dist. Cuyahoga County 2018); *Bank of America, N.A. v. Gibson*, 2014 PA Super 217, 102 A.3d 462 (2014).
- 3 §§ 7 to 11.
- 4 *Kalnoki v. First American Trustee Servicing Solutions, LLC*, 8 Cal. App. 5th 23, 214 Cal. Rptr. 3d 292 (3d Dist. 2017), review filed, (Mar. 13, 2017) and review denied, (May 10, 2017); *U.S. Bank National Association for Home Equity Asset Trust 2004-6 Home Equity Pass-Through Certificates, Series 2004-6 v. Kachik*, 222 So. 3d 592, 93 U.C.C. Rep. Serv. 2d 32 (Fla. 4th DCA 2017); *Cole v. Davis*, 2016 IL App (1st) 152716, 407 Ill. Dec. 514, 63 N.E.3d 946, 90 U.C.C. Rep. Serv. 2d 685 (App. Ct. 1st Dist. 2016); *FV-I, Inc. for Morgan Stanley Mortgage Capital Holdings, LLC v. Kallevig*, 306 Kan. 204, 392 P.3d 1248, 92 U.C.C. Rep. Serv. 2d 586 (2017); *Bayview Loan Servicing, LLC v. Kelly*, 166 A.D.3d 843, 87 N.Y.S.3d 569, 97 U.C.C. Rep. Serv. 2d 316 (2d Dep't 2018); *In re Foreclosure of a Deed of Trust Executed By Rawls*, 243 N.C. App. 316, 777 S.E.2d 796, 87 U.C.C. Rep. Serv. 2d 1016 (2015); *Wells Fargo Bank, N.A. v. Heath*, 2012 OK 54, 280 P.3d 328 (Okla. 2012); *Note Capital Group, Inc. v. Perretta*, 207 A.3d 998 (R.I. 2019); *Great Northern Energy, Inc. v. Circle Ridge Production, Inc.*, 528 S.W.3d 644 (Tex. App. Texarkana 2017), review denied, (Sept. 8, 2017).
- 5 *Alcorn v. Washington Mut. Bank, F.A.*, 111 S.W.3d 264 (Tex. App. Texarkana 2003).
- 6 *Matter of Oakland Physicians Medical Center, L.L.C.*, 596 B.R. 587 (Bankr. E.D. Mich. 2019) (Mich. law); *Schuyler Co-op. Ass'n v. Sahs*, 276 Neb. 578, 755 N.W.2d 802 (2008); *Great Northern Energy, Inc. v. Circle Ridge Production, Inc.*, 528 S.W.3d 644 (Tex. App. Texarkana 2017), review denied, (Sept. 8, 2017).
As to the contractual nature of notes, see § 2.
- 7 *In re Kleibrink*, 346 B.R. 734 (Bankr. N.D. Tex. 2006), aff'd, 2007 WL 2438359 (N.D. Tex. 2007), judgment aff'd, 621 F.3d 370 (5th Cir. 2010).
- 8 *Kryder v. Estate of Rogers*, 296 F. Supp. 3d 892, 99 Fed. R. Serv. 3d 318 (M.D. Tenn. 2017), appeal dismissed, 2018 WL 4621512 (6th Cir. 2018) (Tenn. law); *Matter of Oakland Physicians Medical Center, L.L.C.*, 596 B.R. 587 (Bankr. E.D. Mich. 2019) (Mich. law); *Noroton Properties, LLC v. Lawendy*, 154 Conn. App. 367, 107 A.3d 980 (2014); *Intermax Eco, LLC v. Eco Family Food Mart Corp.*, 172 A.D.3d 1040, 101 N.Y.S.3d 93 (2d Dep't 2019); *Arnold v. Palmer*, 224 W. Va. 495, 686 S.E.2d 725 (2009).
- 9 *Steinberger v. McVey ex rel. County of Maricopa*, 234 Ariz. 125, 318 P.3d 419, 82 U.C.C. Rep. Serv. 2d 590 (Ct. App. Div. 1 2014); *Note Capital Group, Inc. v. Perretta*, 207 A.3d 998 (R.I. 2019); *Hinton v. Nationstar Mortgage LLC*, 533 S.W.3d 44 (Tex. App. San Antonio 2017).
A promissory note is a contract evincing a debt and specifying terms under which one party will pay money to another. *Reese v. Ellis, Painter, Ratterree & Adams, LLP*, 678 F.3d 1211 (11th Cir. 2012).
A note is not a debt but is primary evidence of a debt. *Silicon Valley Bank v. Miracle Faith World Outreach, Inc.*, 140 Conn. App. 827, 60 A.3d 343, 79 U.C.C. Rep. Serv. 2d 722 (2013).
- 10 *In re Alternate Fuels, Inc.*, 789 F.3d 1139 (10th Cir. 2015); *Matter of Oakland Physicians Medical Center, L.L.C.*, 596 B.R. 587 (Bankr. E.D. Mich. 2019) (Mich. law); *Deutsche Bank National Trust Company for Long Beach Mortgage Loan Trust 2006-9 v. Schoenberg*, 2018 IL App (1st) 160871, 423 Ill. Dec. 275, 105 N.E.3d 80 (App. Ct. 1st Dist. 2018); *Santomieri v. Mangen*, 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018); *Bank of America, N.A. v. Gibson*, 2014 PA Super 217, 102 A.3d 462 (2014); *Great Northern Energy, Inc. v. Circle Ridge Production, Inc.*, 528 S.W.3d 644 (Tex. App. Texarkana 2017), review denied, (Sept. 8, 2017).
- 11 *ARCPE 1, LLC v. Nationstar Mortgage, LLC*, 261 F. Supp. 3d 1235 (S.D. Fla. 2017), report and recommendation adopted, 264 F. Supp. 3d 1301 (S.D. Fla. 2017) (Fla. law); *Cleveland v. Crown Financial*,

LLC, 183 So. 3d 1206 (Fla. 1st DCA 2016); Premier Capital, L.L.C. v. Baker, 2012-Ohio-2834, 972 N.E.2d 1125 (Ohio Ct. App. 11th Dist. Portage County 2012).
Thompson v. Bank of America, N.A., 773 F.3d 741 (6th Cir. 2014) (Tenn. law).

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11 Am. Jur. 2d Bills and Notes § 30

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Bills and Notes

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I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes

2. Negotiability of Particular Instruments

c. Note as Negotiable Instrument

§ 30. Draft distinguished from note as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 150(1)

Under Article 3 of the Uniform Commercial Code (UCC), a draft is an order, while a note is a promise to pay.¹ An instrument is a note if it is a promise and is a draft if it is an order.² However, an instrument that falls within the definition of both a note and a draft may be treated as either by the person entitled to enforce the instrument.³ Thus, a draft may be effective and negotiable as a note.⁴

The primary difference between the instruments is that the maker of a note is primarily liable,⁵ while the drawer of a draft or check is only secondarily liable⁶ and has a right to countermand the order or stop payment under certain circumstances.⁷ When a draft is accepted by the drawee or payor, that is, the person on whom the order is drawn, it becomes in effect a promissory note of the drawee or payor; the acceptance is the drawee's signed agreement to pay the draft as presented.⁸

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Footnotes

- ¹ U.C.C. § 3-104(e).
- ² *Spencer v. Sterling Bank*, 63 Cal. App. 4th 1055, 74 Cal. Rptr. 2d 576, 35 U.C.C. Rep. Serv. 2d 398 (2d Dist. 1998).
- ³ U.C.C. § 3-104(e).

- 4 Lialios v. Home Ins. Companies, 87 Ill. App. 3d 740, 43 Ill. Dec. 193, 410 N.E.2d 193, 30 U.C.C. Rep.
 Serv. 226 (1st Dist. 1980).
- 5 § 395.
- 6 § 401.
- 7 § 406.
- 8 §§ 333 et seq.

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11 Am. Jur. 2d Bills and Notes § 31

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Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

I. Introduction to Bills and Notes

B. Negotiability of Bills and Notes


2. Negotiability of Particular Instruments

d. Check as Negotiable Instrument

§ 31. Definition and nature of check as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 1, 149

Forms

Forms relating to negotiability of check, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), the term “check” means a draft, other than a documentary draft, payable on demand and drawn on a bank, or a cashier's check or teller's check; an instrument may be a check even though it is described on its face by another term, such as “money order.”¹ A check is a negotiable instrument² when it conforms with the requirements of negotiability.³ An order that meets all the requirements of a negotiable instrument except that it is not payable to bearer or to order at the time it is issued or first comes into possession of a holder, and that otherwise falls within the definition of a check, is a negotiable instrument and a check.⁴

Comment:

The latter provision on orders⁵ is based on the belief that it is good policy to treat checks, which are payment instruments, as negotiable instruments, regardless of whether they contain the words “to the order of,” which are almost always preprinted on the check form. In the past, some credit unions used check forms that did not contain the quoted words, but those forms are no longer common. In any event, the absence of those words should not affect the rights of persons who acquire a check without being aware that it is not in the conventional form.⁶

A “check” is a signed instrument by which the depositor (the drawer) instructs the financial institution (the drawee) to transfer the depositor's funds to a check bearer in accordance with the account agreement.⁷ The term is defined by the courts as a written order on a bank or banking house, purporting to be drawn upon a deposit of funds for the payment of a certain stated amount of money, to a certain person named in it, or to that person or order, or to bearer, and payable instantly on demand.⁸ In one sense, a check is a contract, and is governed by contract law.⁹

A check that bears an unauthorized signature is not a negotiable instrument.¹⁰ A forged check does not pass an interest to the payee.¹¹

Comment:

The term “check” includes a share draft drawn on a credit union payable through a bank, because a credit union is a bank as defined in the UCC.¹²

Checks are payment instruments rather than credit instruments.¹³ However, the fact that a check is subject to a payday loan law does not affect its status as a negotiable instrument.¹⁴

A casino marker fits within the definition of a check under the UCC.¹⁵

“Pre-authorized drafts” or “telechecks,” created when the buyer has agreed to pay for goods or services by allowing the seller to prepare and issue a preauthorized check drawn on the buyer's account at a financial institution designated by the buyer, are subject to the U.C.C. in the same manner as any other check.¹⁶

Footnotes

- 1 U.C.C. § 3-104(f).
As to money orders, see § 18.
- 2 *Jozefowicz v. Allstate Ins. Co.*, 35 Cal. App. 5th 829, 247 Cal. Rptr. 3d 758 (4th Dist. 2019); *Georg v. Metro Fixtures Contractors, Inc.*, 178 P.3d 1209, 66 U.C.C. Rep. Serv. 2d 477 (Colo. 2008); *Hawkins v. Nalick*, 363 Ill. Dec. 767, 975 N.E.2d 793, 78 U.C.C. Rep. Serv. 2d 593 (App. Ct. 5th Dist. 2012); *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 74 U.C.C. Rep. Serv. 2d 619 (Iowa 2011); *Hoerstman General Contracting, Inc. v. Hahn*, 474 Mich. 66, 711 N.W.2d 340, 59 U.C.C. Rep. Serv. 2d 308 (2006); *RR Maloan Investments, Inc. v. New HGE, Inc.*, 428 S.W.3d 355, 83 U.C.C. Rep. Serv. 2d 311 (Tex. App. Houston 14th Dist. 2014).
- 3 §§ 7 to 11.
- 4 U.C.C. § 3-104(c).
- 5 U.C.C. § 3-104(c).
- 6 U.C.C. § 3-104, Official Comment 2.
- 7 *Kumaraperu v. Feldsted*, 237 Cal. App. 4th 60, 187 Cal. Rptr. 3d 583, 86 U.C.C. Rep. Serv. 2d 733 (2d Dist. 2015).
- 8 *Wilson v. Lewis*, 106 Cal. App. 3d 802, 165 Cal. Rptr. 396, 29 U.C.C. Rep. Serv. 1305 (1st Dist. 1980).
- 9 *People v. Harris*, 39 Cal. App. 3d 965, 114 Cal. Rptr. 892 (5th Dist. 1974); *Bailey v. Polote*, 152 Ga. App. 255, 262 S.E.2d 551 (1979) (holding that a check executed and delivered to the payee is considered a written contract by the drawer in favor of the payee that the drawer's bank will pay the stated amount to the payee upon presentment).
- 10 *Kumaraperu v. Feldsted*, 237 Cal. App. 4th 60, 187 Cal. Rptr. 3d 583, 86 U.C.C. Rep. Serv. 2d 733 (2d Dist. 2015).
- 11 *Federal Land Bank of Louisville v. Hardin-Mapes Coal Corp.*, 817 S.W.2d 225, 16 U.C.C. Rep. Serv. 2d 707 (Ky. 1991).
As to forgery or an unauthorized indorsement being a defense, see §§ 526 et seq.
- 12 U.C.C. § 3-104, Official Comment 4.
Credit union share drafts function exactly like bank checks; there is no appreciable difference between them. *McDowell v. Dallas Teachers Credit Union*, 772 S.W.2d 183, 9 U.C.C. Rep. Serv. 2d 996 (Tex. App. Dallas 1989).
- 13 U.C.C. § 3-118, Official Comment 3.
- 14 *In re Blasco*, 352 B.R. 888, 61 U.C.C. Rep. Serv. 2d 142 (Bankr. N.D. Ala. 2006).
- 15 *In re Miller*, 310 B.R. 185, 64 Fed. R. Evid. Serv. 487, 53 U.C.C. Rep. Serv. 2d 585 (Bankr. C.D. Cal. 2004) (Nev. law); *TeleRecovery of Louisiana, Inc. v. Gaulon*, 738 So. 2d 662, 38 U.C.C. Rep. Serv. 2d 853 (La. Ct. App. 5th Cir. 1999), writ denied, 751 So. 2d 224 (La. 1999).
- 16 *Interbank of New York v. Fleet Bank*, 189 Misc. 2d 20, 730 N.Y.S.2d 208, 45 U.C.C. Rep. Serv. 2d 167 (N.Y. City Civ. Ct. 2001), order aff'd, 4 Misc. 3d 52, 781 N.Y.S.2d 393 (App. Term 2004).

11 Am. Jur. 2d Bills and Notes § 32

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Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

I. Introduction to Bills and Notes

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§ 32. Cashier checks, teller checks, and certified checks as negotiable instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 149

Forms

Forms relating to cashier, teller, and certified checks, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Article 3 of the Uniform Commercial Code (UCC) provides that a “cashier's check” is a draft with respect to which the drawer and drawee are the same bank or branches of the same bank,¹ and is usually considered a “check” for purposes of Article 3² or a negotiable instrument,³ although there is some authority that Article 3 does not apply to cashier's checks.⁴ A cashier's check differs from an ordinary check or draft in that it is the primary obligation of the bank that issued it, being drawn by the bank on itself and accepted by the act of issuance.⁵ It establishes a debtor-creditor relationship between the issuing bank and the payee.⁶ Because the bank serves as both the drawer and the drawee of a cashier's check, the check becomes a promise by the bank to draw the amount of the check from its own resources and to pay the check on demand.⁷

Comment:

Although it is technically more correct to treat a cashier's check as a promise by the issuing bank to pay rather than an order to pay, a cashier's check is in the form of a check and it is normally referred to as a check. Thus, Article 3 follows banking practice in referring to a cashier's check as both a draft and a check rather than a note.⁸

A “teller's check” is a draft drawn by a bank on another bank or payable at or through a bank.⁹

Comment:

A teller's check is always drawn by a bank and is usually drawn on another bank. In some cases a teller's check is drawn on a nonbank but is made payable at or through a bank. Article 3 treats both types of teller's check identically.¹⁰

A “certified check” is a check accepted by the bank on which it is drawn; acceptance may be by the drawee's signed agreement to pay the draft or by a writing on the check which indicates that it is certified.¹¹ A qualified certified check is a negotiable instrument, as when signed by the maker and lacking any stated conditions or other promises, except to pay a sum certain on demand to specified persons.¹²

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Footnotes

- 1 U.C.C. § 3-104(g).
- 2 *In re Allied Respiratory Care Services, Inc.*, 182 B.R. 589, 26 U.C.C. Rep. Serv. 2d 901 (Bankr. S.D. Fla. 1995); *Crosby v. Lewis*, 523 So. 2d 1154, 5 U.C.C. Rep. Serv. 2d 1249 (Fla. 5th DCA 1988); *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 23 U.C.C. Rep. Serv. 2d 482 (Minn. Ct. App. 1994).
- 3 *Agriliance, L.L.C. v. Farmpro Services, Inc.*, 328 F. Supp. 2d 958, 52 U.C.C. Rep. Serv. 2d 36 (S.D. Iowa 2003) (Iowa law); *Spencer v. Sterling Bank*, 63 Cal. App. 4th 1055, 74 Cal. Rptr. 2d 576, 35 U.C.C. Rep. Serv. 2d 398 (2d Dist. 1998).
- 4 *Stringfellow v. First American Nat. Bank*, 878 S.W.2d 940, 24 U.C.C. Rep. Serv. 2d 1173 (Tenn. 1994).
- 5 *Center Video Indus. Co., Inc. v. Roadway Package System, Inc.*, 90 F.3d 185, 29 U.C.C. Rep. Serv. 2d 1239 (7th Cir. 1996); *In re Lee*, 179 B.R. 149, 26 U.C.C. Rep. Serv. 2d 386 (B.A.P. 9th Cir. 1995), decision aff'd, 108 F.3d 239, 31 U.C.C. Rep. Serv. 2d 1044 (9th Cir. 1997) (noting, however, that acceptance does not operate as an assignment of funds in the drawee's possession); *In re Toone*, 140 B.R. 605, 19 U.C.C. Rep.

Serv. 2d 144 (Bankr. D. Mass. 1992); *Sochaczewski v. Wilmington Sav. Fund Soc.*, 508 A.2d 895, 2 U.C.C. Rep. Serv. 2d 181 (Del. Super. Ct. 1986); *Crosby v. Lewis*, 523 So. 2d 1154, 5 U.C.C. Rep. Serv. 2d 1249 (Fla. 5th DCA 1988); *Clark v. Hawkeye Federal Sav. Bank*, 423 N.W.2d 891, 6 U.C.C. Rep. Serv. 2d 1525 (Iowa Ct. App. 1988); *Abilities, Inc. v. Citibank, N.A.*, 87 A.D.2d 831, 449 N.Y.S.2d 242, 33 U.C.C. Rep. Serv. 1428 (2d Dep't 1982); *Community Nat. Bank v. Channelview Bank*, 814 S.W.2d 424, 15 U.C.C. Rep. Serv. 2d 1252 (Tex. App. Houston 1st Dist. 1991).

6 *Myers v. First Nat. Bank of Scotia*, 42 A.D.2d 657, 345 N.Y.S.2d 204, 13 U.C.C. Rep. Serv. 122 (3d Dep't 1973).

7 *Flatiron Linen, Inc. v. First American State Bank*, 23 P.3d 1209, 44 U.C.C. Rep. Serv. 2d 673 (Colo. 2001).

8 U.C.C. § 3-103, Official Comment 2.

9 U.C.C. § 3-104(h).

10 U.C.C. § 3-104, Official Comment 4.

11 U.C.C. § 3-409(d).

12 *Succession of Walker*, 533 So. 2d 70 (La. Ct. App. 3d Cir. 1988), writ denied, 536 So. 2d 1254 (La. 1989) (certified cashier's check).

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11 Am. Jur. 2d Bills and Notes § 33

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§ 33. Traveler's check as negotiable instrument

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West's Key Number Digest

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[Rights of one who acquires lost or stolen traveler's checks, 42 A.L.R.3d 846](#)

Forms

Forms relating to traveler's checks, see Am. Jur. Legal Forms 2d, Bills and Notes [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC), defines a traveler's check as an instrument that (1) is payable on demand, (2) is drawn on or payable at or through a bank, (3) is designated by the term “traveler's check” or by a substantially similar term, and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the

instrument.¹ Traveler's checks constitute complete purchases and sales of credit, and have the characteristics of cashier's checks when issued by a bank.²

Although the definition of negotiable instrument requires an unconditional promise or order to pay,³ if a promise or order requires, as a condition of payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for purposes of the definition of a negotiable instrument.⁴

Traveler's checks may be in the form of a draft or a note.⁵ Regardless of whether they are drafts or notes, this type of paper, now in wide commercial use, is valid and effectual for all purposes in the hands of a holder in due course; any other method of treating such paper in the channels of trade and commerce would interfere with the normal flow of business transactions.⁶

The requirement that an instrument, to be a traveler's check, be drawn on or payable at or through a bank may be satisfied without words on the instrument that identify a bank as drawee or paying agent, so long as the instrument bears an appropriate routing number that identifies a bank as paying agent.⁷

Although the absence of a date on a traveler's check does not render it incomplete and unenforceable, the absence of the name of the payee does make the instrument legally incomplete.⁸

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Footnotes

- 1 U.C.C. § 3-104(i).
- 2 *Rose Check Cashing Service, Inc. v. Chemical Bank New York Trust Co.*, 43 Misc. 2d 679, 252 N.Y.S.2d 100 (App. Term 1964).
- 3 §§ 7 to 11.
- 4 § 82.
- 5 U.C.C. § 3-104, Official Comment 4.
- 6 *Transcontinental & Western Air v. Bank of America N.T. & S.A.*, 46 Cal. App. 2d 708, 116 P.2d 791 (2d Dist. 1941).
- 7 U.C.C. § 3-104, Official Comment 4.
- 8 *Gray v. American Exp. Co.*, 34 N.C. App. 714, 239 S.E.2d 621, 23 U.C.C. Rep. Serv. 362 (1977).
As to the status of incomplete instruments, see §§ 99 et seq.

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§ 34. Check distinguished from draft as negotiable instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 149

Under Article 3 of the Uniform Commercial Code (UCC), while a check is a draft,¹ the features distinguishing checks from other drafts are that checks are always drawn on a bank and that they are payable instantly on demand and not at a specified future time.² Also, checks are supposed to be drawn upon a previous deposit of funds.³

The U.C.C. does not generally distinguish between checks and other drafts with regard to such matters as the effect of a delay in presentment.⁴ However, certain provisions of the U.C.C. do differentiate between a check and a draft; for example, under one such provision, where a holder of a check procures its certification (acceptance), the drawer and all prior indorsers are discharged.⁵

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Footnotes

- ¹ § 31.
- ² *Dubler v. Toscana Straw Goods Corp.*, 142 Misc. 369, 254 N.Y.S. 464 (N.Y. City Ct. 1932).
- ³ *Rose Check Cashing Service, Inc. v. Chemical Bank New York Trust Co.*, 43 Misc. 2d 679, 252 N.Y.S.2d 100 (App. Term 1964).
- ⁴ § 284.

5 [Am. Jur. 2d, Banks and Financial Institutions § 926.](#)

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§ 35. Postdated check as negotiable instrument

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Under Article 3 of the Uniform Commercial Code (UCC), although the requirement that a check must be payable on demand is essential to negotiability,¹ the fact that a check is postdated does not affect the check's character as a negotiable instrument,² since it is payable on or at any time after the day of its date.³ It is not a representation that funds are available when the check is given, but rather is in the nature of a promise to discharge a present obligation at a future date.⁴

Knowledge that a check is postdated, by itself, does not (1) give notice of the payor's defense or claim to the check, or (2) impose a duty to make any investigation to ascertain whether the payor had any defenses which would have justified the payor in refusing to pay the payee.⁵

Even if a postdated check technically may not be called a check because it is not payable on demand, it is at least a draft.⁶

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Footnotes

¹ § 31.

² *RR Maloan Investments, Inc. v. New HGE, Inc.*, 428 S.W.3d 355, 83 U.C.C. Rep. Serv. 2d 311 (Tex. App. Houston 14th Dist. 2014).

- 3 Carnival Leisure Industries, Ltd. v. Aubin, 830 F. Supp. 371, 22 U.C.C. Rep. Serv. 2d 228 (S.D. Tex. 1993),
rev'd on other grounds, 53 F.3d 716 (5th Cir. 1995); In re Paralelo 42 Corp., 18 B.R. 433, 33 U.C.C. Rep.
Serv. 600 (Bankr. S.D. Fla. 1982); Wright v. Bank of America, N. T. & S. A., 176 Cal. App. 2d 176, 1 Cal.
Rptr. 202, 76 A.L.R.2d 1293 (2d Dist. 1959); Thompson v. Adcox, 63 S.W.3d 783 (Tenn. Ct. App. 2001)
(Tenn. App.) (for purposes of a statute on liability for a dishonored check).
As to the effect of postdating, generally see § 49.
- Postdated drafts that did not contain a restrictive endorsement were payable on demand, even though the
payees agreed to hold them for a short period, and thus constituted “checks” for the purpose of a criminal
prosecution for issuing bad checks. State v. McWilliams, 2008 MT 59, 341 Mont. 517, 178 P.3d 121, 65
U.C.C. Rep. Serv. 2d 143 (2008).
- 4 Azzarello v. Richards, 198 Misc. 723, 99 N.Y.S.2d 597 (Mun. Ct. 1950); Howells, Inc. v. Nelson, 565 P.2d
1147 (Utah 1977).
- 5 RR Maloan Investments, Inc. v. New HGE, Inc., 428 S.W.3d 355, 83 U.C.C. Rep. Serv. 2d 311 (Tex. App.
Houston 14th Dist. 2014).
- 6 Allied Color Corp. v. Manufacturers Hanover Trust Co., 484 F. Supp. 881, 28 U.C.C. Rep. Serv. 456 (S.D.
N.Y. 1980); In re J.I.C. Installations, Inc., 109 B.R. 43 (Bankr. S.D. N.Y. 1989); Morrison v. Shanwick Intern.
Corp., 167 Ariz. 39, 804 P.2d 768 (Ct. App. Div. 1 1990).

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

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West's A.L.R. Digest, Bills and Notes  [4](#), [5](#), [28](#), [30](#), [31](#), [144](#), [147 to 151](#), [153](#)

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11 Am. Jur. 2d Bills and Notes § 36

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

A. In General

§ 36. Negotiability of instrument determined by form

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 144, 148.1

Under Article 3 of the Uniform Commercial Code (UCC), as generally applicable to negotiable instruments,¹ negotiability is a matter of the form of the instrument,² and the content of the instrument,³ within the U.C.C. provisions governing the form of negotiable instruments,⁴ looking to the face of the instrument itself.⁵ The rights and obligations connected to a negotiable instrument derive from its form and are inextricably dependent on it.⁶

When determining whether an instrument is negotiable, only the instrument in question should be examined.⁷ The negotiability of an instrument is determined from the four corners of the instrument at the time it is issued, without reference to extrinsic facts⁸ or parol evidence.⁹ A promissory note may not be modified by the imposition of conditions not apparent on its face,¹⁰ although attached instruments, on a separate form but made part of the instrument, can control the effect of the instrument as a whole.¹¹

Comment:

An instrument is not negotiable unless the holder can ascertain all of its essential terms from its face.¹² “Face” in this connection includes the back as well as the front of the instrument.¹³

Negotiability of an instrument is determined by the presence or absence of the legal elements of negotiability, and not by an express provision that the writing is negotiable.¹⁴

Reminder:

The negotiability of a draft or a note may be restrained by special words in the body of the instrument itself,¹⁵ or where payment is restricted to a particular person, such as by a legend to that effect, and the addition of other terms involves the risk of impairment of negotiability, although there are many terms that customarily and safely are added to particular types of instruments.¹⁶

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Footnotes

- 1 § 3.
- 2 U.S. Bank NA as Trustee of Holders of the J.P. Morgan Mortgage Trust 2007-S3 Mortgage Pass-Through Certificates v. Cannella, 64 Misc. 3d 410, 99 N.Y.S.3d 579, 98 U.C.C. Rep. Serv. 2d 745 (Sup 2019).
- 3 Bank of New York Mellon v. Rogers, 2016 IL App (2d) 150712, 407 Ill. Dec. 365, 63 N.E.3d 289, 90 U.C.C. Rep. Serv. 2d 752 (App. Ct. 2d Dist. 2016).
If an instrument is "subject to or governed by another agreement," its negotiability is destroyed, and the determination of whether the instrument is subject to another agreement must be made from content of the instrument itself. *Schmuckie v. Alvey*, 758 S.W.2d 31, 8 U.C.C. Rep. Serv. 2d 1110 (Ky. 1988).
- 4 *OneWest Bank, N.A. v. FMCDH Realty, Inc.*, 165 A.D.3d 128, 83 N.Y.S.3d 612, 96 U.C.C. Rep. Serv. 2d 999 (2d Dep't 2018).
- 5 *DRFP, LLC v. Republica Bolivariana de Venezuela*, 945 F. Supp. 2d 890 (S.D. Ohio 2013) (Ohio law); *Trendmark Homes, Inc. v. Bank of North Georgia*, 314 Ga. App. 886, 726 S.E.2d 138 (2012); *Brisk v. Draf Industries, Inc.*, 2012-Ohio-1311, 77 U.C.C. Rep. Serv. 2d 276 (Ohio Ct. App. 10th Dist. Franklin County 2012); *Bucci v. Northwest Trustee Services, Inc.*, 197 Wash. App. 318, 387 P.3d 1139, 91 U.C.C. Rep. Serv. 2d 559 (Div. 1 2016), review denied, 188 Wash. 2d 1012, 394 P.3d 1011 (2017).
The negotiability of an instrument, as a promise to pay, must be determined from the face of the instrument. *FFP Marketing Co., Inc. v. Long Lane Master Trust IV*, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex. App. Fort Worth 2005).
- 6 U.S. Bank NA as Trustee of Holders of the J.P. Morgan Mortgage Trust 2007-S3 Mortgage Pass-Through Certificates v. Cannella, 64 Misc. 3d 410, 99 N.Y.S.3d 579, 98 U.C.C. Rep. Serv. 2d 745 (Sup 2019).
- 7 *Carmichael v. Higginson*, 2017 UT App 139, 402 P.3d 146, 93 U.C.C. Rep. Serv. 2d 379 (Utah Ct. App. 2017), cert. denied, 409 P.3d 1047 (Utah 2017).
- 8 *Bankers Trust (Delaware) v. 236 Beltway Inv.*, 865 F. Supp. 1186, 26 U.C.C. Rep. Serv. 2d 776 (E.D. Va. 1994); *In re Blasco*, 352 B.R. 888, 61 U.C.C. Rep. Serv. 2d 142 (Bankr. N.D. Ala. 2006); *Foster v. Hacienda*

Nirvana, Inc., 32 So. 3d 1256, 69 U.C.C. Rep. Serv. 2d 1076 (Ala. 2009); Partney v. Reed, 889 S.W.2d 896, 25 U.C.C. Rep. Serv. 2d 154 (Mo. Ct. App. S.D. 1994); Ingram v. Earthman, 993 S.W.2d 611, 40 U.C.C. Rep. Serv. 2d 500 (Tenn. Ct. App. 1998).

The negotiability of an instrument, as a promise to pay, cannot rest on obligations found outside the four corners of the instrument. FFP Marketing Co., Inc. v. Long Lane Master Trust IV, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex. App. Fort Worth 2005).

The negotiability of an instrument, and the certainty of the terms of payment, must be determined within the four corners of the instrument; if the language requires looking to outside notes, then the promise of payment is not unconditional. In re AppOnline.com, Inc., 321 B.R. 614 (E.D. N.Y. 2003), judgment aff'd, 128 Fed. Appx. 171 (2d Cir. 2004) (N.Y. law).

Trendmark Homes, Inc. v. Bank of North Georgia, 314 Ga. App. 886, 726 S.E.2d 138 (2012).

Trendmark Homes, Inc. v. Bank of North Georgia, 314 Ga. App. 886, 726 S.E.2d 138 (2012).

Guarantor Partners v. Huff, 830 S.W.2d 73, 18 U.C.C. Rep. Serv. 2d 798 (Tenn. Ct. App. 1992).

U.C.C. § 3-106, Official Comment 1.

Martin v. Grunig, 282 A.D. 710, 122 N.Y.S.2d 75 (2d Dep't 1953).

Words on the back of the instrument may effectively cancel any implication of negotiability provided by the words "pay to the order of" on the face of the note, when the back notations are made contemporaneously with the execution of the instrument and are intended to be part of the contract of payment, becoming as much a part of the note as if incorporated on its face. First State Bank at Gallup v. Clark, 1977-NMSC-088, 91 N.M. 117, 570 P.2d 1144, 22 U.C.C. Rep. Serv. 1186 (1977).

Holsonback v. First State Bank of Albertville, 394 So. 2d 381, 30 U.C.C. Rep. Serv. 222 (Ala. Civ. App. 1980); Cartwright v. MBank Corpus Christi, N.A., 865 S.W.2d 546 (Tex. App. Corpus Christi 1993), writ denied, (May 4, 1994); First Federal Sav. & Loan Ass'n of Salt Lake City v. Gump & Ayers Real Estate, Inc., 771 P.2d 1096, 9 U.C.C. Rep. Serv. 2d 139 (Utah Ct. App. 1989).

§ 38.

§ 94.

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11 Am. Jur. 2d Bills and Notes § 37

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

A. In General

§ 37. Words of negotiability in instrument; payable to order or bearer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  5, 31, 147, 153

A.L.R. Library

[When is instrument "payable to bearer or to order" as required to constitute negotiable instrument under Article 3 of the Uniform Commercial Code \[rev\] s 3-104\(a\)\(1\) and 3-109, 77 A.L.R.5th 523](#)

Forms

Forms relating to notes payable to order or to bearer, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that, to be a negotiable instrument, an instrument generally must be payable to order or to bearer at the time it is issued or comes into the possession of a holder.¹ In determining the negotiability of an instrument, the significant words are words of negotiability,² or those words that represent either bearer or order.³ The words "payable to the order of" or payable "to (identified payee) or order" must appear within the instrument in order to qualify

it as a negotiable instrument.⁴ An instrument making a promise to pay, but expressly excluding⁵ or lacking the words "payable to order or to bearer," is nonnegotiable.⁶

Comment:

The exclusion from Article 3 of promises or orders that are not payable to bearer or to order provides a simple device to exclude a writing that does not fit the pattern of typical negotiable instruments and is not intended to be a negotiable instrument. Words making a promise or order payable to bearer or to order are the most distinguishing feature of a negotiable instrument, and those words are frequently referred to as words of negotiability; the absence of those words precludes any argument that contracts for the sale of goods or services, leases, or similar writings that contain a promise to pay money might be negotiable instruments.⁷

An instrument is payable to bearer if it:⁸

(1) states that it is payable to bearer or to the order of bearer, or otherwise indicates that the person in possession of the instrument is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to the order of cash or otherwise indicates that it is not payable to an identified person.

An instrument that is not payable to bearer is payable to order if it is payable to the order of an identified person, or to an identified person or order.⁹ However, notes payable simply to a specific payee, and not to the order of the payee or to the payee or order, are not negotiable,¹⁰ subject to an exception for checks.¹¹

A negotiable instrument payable to bearer may become payable to order if it is specially indorsed, and an instrument that is payable to order becomes payable to bearer when indorsed in blank.¹²

A sales contract is not a negotiable instrument, where the promise of the buyer is to pay a specific person rather than to pay to order or bearer.¹³

A note, consisting of a retail installment contract for home improvements and a completion certificate signed by the homeowners, which was not made payable either to bearer or to order, was not a negotiable instrument, and thus a subsequent possessor could not be a holder in due course.¹⁴

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Footnotes

¹ U.C.C. § 3-104(a)(1).

² *Carmichael v. Higginson*, 2017 UT App 139, 402 P.3d 146, 93 U.C.C. Rep. Serv. 2d 379 (Utah Ct. App. 2017), cert. denied, 409 P.3d 1047 (Utah 2017).

- 3 *State v. Herrera*, 130 N.M. 85, 2001-NMCA-007, 18 P.3d 326, 44 U.C.C. Rep. Serv. 2d 186 (Ct. App. 2000).
A deed of trust note qualified as a negotiable instrument when made payable to the order of the deed of trust lender. *In re Smith*, 509 B.R. 260, 83 U.C.C. Rep. Serv. 2d 329 (Bankr. N.D. Cal. 2014) (Calif. law).
A confirmation and advice statement issued by a bank was not payable to bearer or to order, and, thus, was not a negotiable instrument. *In re Alabama Land and Mineral Corp.*, 292 F.3d 1319, 48 U.C.C. Rep. Serv. 2d 379 (11th Cir. 2002) (Ky. law).
- 4 *Whitaker v. Limeco Corp.*, 32 So. 3d 429 (Miss. 2010).
- 5 *Morgan v. Farmers & Merchants Bank*, 856 So. 2d 811, 49 U.C.C. Rep. Serv. 2d 1019 (Ala. 2003); *Skiles v. Security State Bank*, 1 Neb. App. 360, 494 N.W.2d 355, 20 U.C.C. Rep. Serv. 2d 512 (1992).
- 6 *Carmichael v. Higginson*, 2017 UT App 139, 402 P.3d 146, 93 U.C.C. Rep. Serv. 2d 379 (Utah Ct. App. 2017), cert. denied, 409 P.3d 1047 (Utah 2017).
- 7 U.C.C. § 3-104, Official Comment 2.
- 8 U.C.C. § 3-109(a).
- 9 U.C.C. § 3-109(b).
A designation in a note that it is payable to “[plaintiff] or order” is sufficient to meet the requirement that it be payable to order. *Lakhaney v. Anzelone*, 788 F. Supp. 160, 18 U.C.C. Rep. Serv. 2d 191 (S.D. N.Y. 1992).
- 10 *Sirius LC v. Erickson*, 144 Idaho 38, 156 P.3d 539, 62 U.C.C. Rep. Serv. 2d 411 (2007); *Krajcir v. Egidi*, 305 Ill. App. 3d 613, 238 Ill. Dec. 813, 712 N.E.2d 917, 38 U.C.C. Rep. Serv. 2d 1213 (1st Dist. 1999); *Carmichael v. Higginson*, 2017 UT App 139, 402 P.3d 146, 93 U.C.C. Rep. Serv. 2d 379 (Utah Ct. App. 2017), cert. denied, 409 P.3d 1047 (Utah 2017).
- 11 § 31.
- 12 U.C.C. § 3-109(c).
Blank and special indorsements are discussed in §§ 196 et seq.
- 13 *Sunrizon Homes, Inc. v. American Guar. Inv. Corp.*, 1988 OK 145, 782 P.2d 103, 7 U.C.C. Rep. Serv. 2d 796 (Okla. 1988).
- 14 *Leavings v. Mills*, 175 S.W.3d 301, 54 U.C.C. Rep. Serv. 2d 678 (Tex. App. Houston 1st Dist. 2004).

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

A. In General

§ 38. Conspicuous statement rendering instrument nonnegotiable

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  144, 150(1), 151

A.L.R. Library

[Effect on negotiability of instrument, under terms of U.C.C. S 3-104\(1\), of statements expressly limiting negotiability or transferability, 58 A.L.R.4th 632](#)

Article 3 of the Uniform Commercial Code (UCC) provides that a promise or order other than a check is not a negotiable instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not a negotiable instrument governed by Article 3.¹ The presence of the required conspicuous statement of nonnegotiability defeats negotiability.²

Comment:

The Code allows exclusion from Article 3 of a writing that would otherwise be an instrument by a statement to the effect that the writing is not negotiable or is not governed by Article 3. For example, a promissory note can be stamped with the legend NOT NEGOTIABLE. The effect under the Code is not only to negate the possibility of a holder in due course, but to prevent the writing from being a negotiable instrument for any purpose.³



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Footnotes

- 1 U.C.C. § 3-104(d).
- 2 [Thompson v. Bank of America, N.A.](#), 773 F.3d 741 (6th Cir. 2014) (Tenn. law); [Morgan v. Farmers & Merchants Bank](#), 856 So. 2d 811, 49 U.C.C. Rep. Serv. 2d 1019 (Ala. 2003); [Trader v. Comerica Bank](#), 293 Mich. App. 210, 809 N.W.2d 429 (2011).
- A certificate of deposit (CD) confirmation that stated in upper-case type that the CD was nontransferable qualified as a conspicuous statement that the promise or order was not negotiable, and thus the CD was not a "negotiable instrument" and was not governed by the negotiable instrument provisions of the UCC. [Thompson v. First Citizens Bank & Trust Co.](#), 151 N.C. App. 704, 567 S.E.2d 184, 48 U.C.C. Rep. Serv. 2d 209 (2002).
- 3 U.C.C. § 3-104, Official Comment 3.

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

A. In General

§ 39. Writing and other formal requirements for negotiability of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  4, 28, 30, 149, 150(1)

Under Article 3 of the Uniform Commercial Code (UCC), the definition of an instrument as either a promise or an order, requires either a signed written undertaking to pay money or a signed written instruction to pay money,¹ meaning that only a writing may constitute a negotiable instrument² and be enforced as a negotiable instrument.³ In other words, a negotiable instrument is an unconditional promise in writing to pay,⁴ or written contract to pay.⁵

Definition:

Under the general definitional provisions of Article 1 of the UCC, the terms written or writing include printing, typewriting, or any other intentional reduction to tangible form.⁶

The requirements of a negotiable instrument⁷ may be expressed in a letter as well as in more formal documents.⁸

In deciding whether a document qualifies as a note, only the writing itself may be considered, and not the conduct of the parties.⁹ To that end, the character of the entire writing must be considered, not merely its title or heading¹⁰ or a letterhead.¹¹

That a written promissory note is in addition to another written agreement, such as a real estate purchase agreement, does not merge the two in a manner that precludes enforcement of the note as a negotiable instrument, when the two are separate agreements and not in contravention of each other.¹²

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Footnotes

- 1 § 7.
- 2 U.C.C. § 3-104, Official Comment 1.
- 3 *Santomieri v. Mangen*, 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018).
- 4 *Kryder v. Estate of Rogers*, 296 F. Supp. 3d 892, 99 Fed. R. Serv. 3d 318 (M.D. Tenn. 2017), appeal dismissed, 2018 WL 4621512 (6th Cir. 2018) (Tenn. law); *Smith v. Union State Bank*, 452 N.E.2d 1059, 37 U.C.C. Rep. Serv. 160 (Ind. Ct. App. 1983); *Edlund v. Bounds*, 842 S.W.2d 719 (Tex. App. Dallas 1992), writ denied, (Jan. 13, 1993).
- 5 *Laas v. Wright*, 191 S.W.3d 93 (Mo. Ct. App. S.D. 2006).
- 6 U.C.C. § 1-201(b)(43).
- 7 §§ 7 to 11.
- 8 *Equitable Trust Co. of New York v. Taylor*, 146 A.D. 424, 131 N.Y.S. 475 (2d Dep't 1911).
- 9 *Dixie Web Graphic Corp. v. Sharp*, 619 So. 2d 1173 (La. Ct. App. 1st Cir. 1993).
- 10 *Cadle Co. v. Richardson*, 597 So. 2d 1052 (La. Ct. App. 2d Cir. 1992).
- 11 *Dixie Web Graphic Corp. v. Sharp*, 619 So. 2d 1173 (La. Ct. App. 1st Cir. 1993).
- 12 *Santomieri v. Mangen*, 2018-Ohio-1443, 111 N.E.3d 483 (Ohio Ct. App. 3d Dist. Auglaize County 2018), appeal not allowed, 153 Ohio St. 3d 1462, 2018-Ohio-3258, 104 N.E.3d 792 (2018).

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

A. In General

§ 40. Effect of contract, conduct, or estoppel on negotiability of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 144

A.L.R. Library

[Effect on negotiability of instrument, under terms of U.C.C. S 3-104\(1\), of statements expressly limiting negotiability or transferability, 58 A.L.R.4th 632](#)

[Validity, in contract for installment sale of consumer goods, or commercial paper given in connection therewith, of provision waiving, as against assignee, defenses good against seller, 39 A.L.R.3d 518](#)

Under Article 3 of the Uniform Commercial Code (UCC), a writing that does not meet the requirements of the U.C.C. cannot be made a negotiable instrument within Article 3 by contract or by conduct. However, an order or promise may fail to meet the statutory requirements for negotiability but be similar to a negotiable instrument in many respects, and nothing in Article 3 is intended to mean that a court could not arrive at a result similar to the result that would follow if the writing were a negotiable instrument. It may be appropriate for a court to apply one or more of the provisions of Article 3 by analogy, taking into account the expectations of the parties and the differences between the writing and an instrument governed by Article 3.¹ For example, a court might find that the obligor with respect to a promise that does not meet the requirements of negotiability is precluded from asserting a defense against a bona fide purchaser, basing the preclusion on estoppel or ordinary principles of contract law, rather than the law of negotiable instruments.²

Footnotes

- 1 [U.C.C. § 3-104](#), Official Comment 2.
2 [U.C.C. § 3-104](#), Official Comment 2.

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

A. In General

§ 41. Duplicate or substitute instrument on loss or destruction of original

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 28, 150(1)

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[Statute excluding testimony of one person because of death of another as applied to testimony in respect of lost or destroyed instrument, 18 A.L.R.3d 606](#)

Forms

Forms relating to lost or destroyed instrument or note, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [\[Westlaw®\(r\) Search Query\]](#)

A bill or note is not a debt, it is only primary evidence of a debt,¹ and when this is lost, impaired or destroyed bona fide, it may be supplied by secondary evidence.²

A carbon copy is not a duplicate and cannot meet the statutory requirements of negotiability if it does not bear an original signature.³

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Footnotes

- 1 § 115.
- 2 § 117.
- 3 Chrismer v. Chrismer, 103 Ohio App. 23, 3 Ohio Op. 2d 116, 144 N.E.2d 494 (2d Dist. Preble County 1956).
As to substitutes in the form of renewals, see § 173.

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

B. Execution of Bills and Notes

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A.L.R. Index, Uniform Commercial Code

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

B. Execution of Bills and Notes

1. Signature for Execution of Bills and Notes

§ 42. Requirement of signing for execution of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  54, 59

Forms

Forms relating to execution or signing, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), the definition of an instrument as either a promise or an order requires either a signed written undertaking to pay money or a signed written instruction to pay money,¹ meaning that any writing, to be a negotiable instrument, must be signed by the maker or drawer.² A person is not liable on an instrument unless (1) that person signed it, or (2) the person is represented by an agent or representative who signed the instrument and, under the provision of the U.C.C. governing signatures by representatives, the signature is binding on the person represented.³ In other words, the general rule under the U.C.C. is that in order for a promissory note to be enforceable, it must be signed by an identifiable maker,⁴ and a person is not liable on a negotiable instrument unless that person's signature appears on it,⁵ although it is not necessary that the name of the obligor appear on the instrument, so long as there is a signature that binds the obligor.⁶

Reminder:

Even if the absence of the makers' signatures would prevent the makers from being liable on a note, it does not preclude their liability for the underlying indebtedness.⁷ In other words, even if a promissory note does not constitute a negotiable instrument, if it memorializes a debt between the parties that, through a party's signature, acknowledges that party's obligation to pay, the note is enforceable under traditional principles of contract law.⁸

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Footnotes

- 1 [§ 7.](#)
- 2 [U.C.C. § 3-104](#), Official Comment 1.
- 3 [U.C.C. § 3-401\(a\)](#).
As to signatures by agents or representatives, see [§ 45](#).
The purpose of the signature on a check is to authenticate and effect the instruction, i.e., to authorize and obligate the financial institution to pay out the funds in accordance with the depositor's prior instructions; it is the act of signing the check instrument, not the name signed, that creates the transaction. [Kumaraperu v. Feldsted](#), 237 Cal. App. 4th 60, 187 Cal. Rptr. 3d 583, 86 U.C.C. Rep. Serv. 2d 733 (2d Dist. 2015).
- 4 [Palmisano v. Nauman-Anderson](#), 167 So. 3d 891 (La. Ct. App. 5th Cir. 2015); [Genger v. Genger](#), 87 A.D.3d 871, 929 N.Y.S.2d 232 (1st Dep't 2011).
A document signed and dated by the borrower was a promissory note where it was entitled "home equity creditline agreement and disclosure statement," contained the borrower's promise to pay the lender, and was signed by the borrower. [In re Spencer](#), 354 B.R. 758 (Bankr. D. S.C. 2006) (S.C. law).
- 5 [Dobbins v. Cunningham](#), 217 W. Va. 580, 618 S.E.2d 589, 59 U.C.C. Rep. Serv. 2d 538 (2005).
A person is not liable on an instrument unless that person signed the instrument. [Prestridge v. Bank of Jena](#), 924 So. 2d 1266, 59 U.C.C. Rep. Serv. 2d 103 (La. Ct. App. 3d Cir. 2006), writ denied, 929 So. 2d 1261 (La. 2006); [Bank of Am., N.A. v. Calloway](#), 2016-Ohio-7959, 74 N.E.3d 843 (Ohio Ct. App. 8th Dist. Cuyahoga County 2016), appeal not allowed, 150 Ohio St. 3d 1452, 2017-Ohio-8136, 83 N.E.3d 938 (2017).
When a third party does not sign a note, and the signatory does not sign in representative capacity of the third party, the third party is not liable on the note. [ROSL, Inc. v. Des Jardins](#), 756 So. 2d 1078 (Fla. 4th DCA 2000).
- 6 [U.C.C. § 3-401](#), Official Comment 1.
- 7 [626 Joint Venture v. Spinks](#), 873 S.W.2d 73, 24 U.C.C. Rep. Serv. 2d 151 (Tex. App. Austin 1993).
- 8 [Shlang v. Inbar](#), 149 A.D.3d 1402, 52 N.Y.S.3d 724 (3d Dep't 2017).

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11 Am. Jur. 2d Bills and Notes § 43

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes


B. Execution of Bills and Notes

1. Signature for Execution of Bills and Notes

§ 43. Manner or form of signature for execution of instrument

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West's Key Number Digest

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Forms

Forms relating to execution or signing, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes; Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that a signature may be made by a word, mark, or symbol executed or adopted by a person with the present intention to authenticate a writing.¹ The signature may be made manually, or by means of a device or machine.² By this provision, the U.C.C. treats stamp signatures as equal to original signatures, and creates a presumption that stamp signatures are authentic.³ While a handwritten signature is not required to constitute a signature on a bank money order, and a signature may be made manually or by means of a device or machine, a typewritten or embossed name, without some external mark, on a money order, cannot be understood to authenticate the writing where the instrument requires an authorized signature in the purchaser signer for drawer space.⁴

Definition:

Under the general definitional provisions of Article 1 of the UCC, “signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.⁵

Comment:

The general definition of "signed" under Article 1 makes it clear that a complete signature is not necessary; a signature may be printed, stamped or written, and it may be by initials or by thumbprint.⁶

Courts have interpreted the “present intention” requirement to mean that, in deciding whether a party has affixed its name to instrument with the present intention to authenticate the instrument, the courts must use common sense and commercial experience.⁷ The preprinted name of the chairman of credit card company that printed stolen money orders, and which appeared in script in the lower right-hand corner of instruments, was clearly placed on money orders with the present intention to authenticate them and qualified as the chairman's "signature," for purposes of deciding whether money orders qualified as negotiable instruments.⁸

Comment:

Any trade name or assumed name may be used, however false or fictitious, which is adopted for the purpose; parol evidence is admissible to identify the signer, and when the signer is identified, the signature is effective. However, the provisions of [U.C.C. § 3-401](#) are not intended to affect any statute or rule of law requiring a signature or mark to be witnessed or any signature to be otherwise authenticated, or requiring any form of proof.⁹

Footnotes

1 [U.C.C. § 3-401\(b\)\(ii\)](#).

- 2 U.C.C. § 3-401(b)(i).
A corporate check with a facsimile signature on its face was a valid instrument, where the facsimile signature
was authorized by a corporate resolution, a certified copy of which was furnished to the bank. [Phoenix Die
Casting Co. v. Manufacturers & Traders Trust Co.](#), 50 Misc. 2d 152, 269 N.Y.S.2d 890, 3 U.C.C. Rep. Serv.
519 (Sup 1966).
- 3 FV-I, Inc. for Morgan Stanley Mortgage Capital Holdings, LLC v. Kallevig, 306 Kan. 204, 392 P.3d 1248,
92 U.C.C. Rep. Serv. 2d 586 (2017).
- 4 Smith v. Farmers Union Mut. Ins. Co., 2011 MT 216, 361 Mont. 516, 260 P.3d 163, 75 U.C.C. Rep. Serv.
2d 575 (2011).
- 5 U.C.C. § 1-201(b)(37).
- 6 U.C.C. § 1-201, Official Comment 37.
- 7 Triffin v. Dillabough, 448 Pa. Super. 72, 670 A.2d 684, 29 U.C.C. Rep. Serv. 2d 499 (1996), *aff'd*, 552 Pa.
550, 716 A.2d 605, 36 U.C.C. Rep. Serv. 2d 255 (1998).
- 8 Triffin v. Dillabough, 448 Pa. Super. 72, 670 A.2d 684, 29 U.C.C. Rep. Serv. 2d 499 (1996), *aff'd*, 552 Pa.
550, 716 A.2d 605, 36 U.C.C. Rep. Serv. 2d 255 (1998).
- 9 U.C.C. § 3-401, Official Comment 2.

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11 Am. Jur. 2d Bills and Notes § 44

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

B. Execution of Bills and Notes

1. Signature for Execution of Bills and Notes

§ 44. Place of signature for execution of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 54

Under Article 3 of the Uniform Commercial Code (UCC), a signature need not be subscribed, but may appear in the body of the instrument, as in the case of “I, John Doe, promise to pay ___,” without any other signature.¹ On the other hand, a printed name at the top of a check did not constitute the signature, because there was a written signature (a forged one) at the appropriate place on the bottom of the check.²

There is a customary place for the signature of parties to an instrument according to whether they are makers or drawers on the one hand, or indorsers on the other; normally, a maker or drawer signs in the lower right-hand corner on the face of the instrument,³ while an indorser signs on the back.⁴ An acceptor of a draft normally signs across the face of the draft.⁵ Courts have noted that by long established practice, judicially noticed or otherwise established, a signature in the lower right-hand corner of an instrument indicates an intent to sign as the maker of a note or the drawer of a draft.⁶

Comment:

Under the general definitional provisions of Article 1 of the UCC, the signature may be on any part of the document and in appropriate cases may be found in a billhead or letterhead.⁷

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Footnotes

- 1 U.C.C. § 3-401, Official Comment 2.
- 2 *Littky & Mallon v. Michigan Nat. Bank of Detroit*, 94 Mich. App. 29, 287 N.W.2d 359, 28 U.C.C. Rep. Serv. 715 (1979).
- 3 *Seronick v. Levy*, 26 Mass. App. Ct. 367, 527 N.E.2d 746 (1988).
- 4 § 193.
- 5 § 336.
- 6 *Ritzau v. Warm Springs West*, 589 F.2d 1370, 26 U.C.C. Rep. Serv. 94 (9th Cir. 1979); *Bostwick Banking Co. v. Arnold*, 227 Ga. 18, 178 S.E.2d 890, 8 U.C.C. Rep. Serv. 869 (1970); *Seronick v. Levy*, 26 Mass. App. Ct. 367, 527 N.E.2d 746 (1988); *Huron County Banking Co., N.A. v. Knallay*, 22 Ohio App. 3d 110, 489 N.E.2d 1049, 2 U.C.C. Rep. Serv. 2d 197 (6th Dist. Huron County 1984); *Roark v. Hicks*, 234 Va. 470, 362 S.E.2d 711, 5 U.C.C. Rep. Serv. 2d 640 (1987).
- 7 U.C.C. § 1-201, Official Comment 37.

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11 Am. Jur. 2d Bills and Notes § 45

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes


B. Execution of Bills and Notes

1. Signature for Execution of Bills and Notes

§ 45. Agent or representative signing for execution of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  119, 123(1), 123(2)

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[Construction and application of U.C.C. sec. 3-403\(2\) dealing with personal liability of authorized representative who signs negotiable instrument in his own name, 97 A.L.R.3d 798](#)

[Power and authority of president of business corporation to execute commercial paper, 96 A.L.R.2d 549](#)

[Personal liability of one who signs or indorses without qualification commercial paper of corporation, 82 A.L.R.2d 424](#)

[Authority of agent to indorse and transfer commercial paper, 37 A.L.R.2d 453](#)

Forms

Forms relating to signature by agent or representative, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Definition:

Under the general definitional provisions of Article 1 of the Uniform Commercial Code (UCC), the term “representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.¹

Article 3 of the U.C.C. first specifies when a represented person is bound on an instrument if the instrument is signed by a representative: if under the law of agency, the represented person would be bound by the act of the representative in signing either the name of the represented person or that of the representative, the signature is the authorized signature of the represented person.² Article 3 provides that, if a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the “authorized signature of the represented person” and that person is liable on the instrument, regardless of whether that person was identified in the instrument.³ Principals are liable on negotiable instruments when the principals' agent, acting as an agent, signs the instrument and has common law authority to do so,⁴ and there is no requirement that the principal be identified in the body of promissory note signed by the agent on behalf of the principal.⁵

Article 3 then covers the question of when an agent who signs an instrument on behalf of a principal is bound on the instrument.⁶ If a representative signs the representative's name to an instrument and the signature is an authorized signature of the represented person, and if the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.⁷ A representative is not personally liable on an instrument when the representative signs the representative's name together with the representative's capacity and the represented person's name.⁸ A note signed “[corporation name] by [signer's name]” and followed by the signer's job title is prima facie evidence the signer is not personally liable on the note.⁹ Whether a note is executed by a party in an individual or representative capacity is a question to be determined from the consideration of the whole instrument,¹⁰ but when it is apparent from a promissory note that the true object and intent of its execution is to bind the principal, and not the agent, courts will adopt that construction of it, since contract terms can override the signature of an officer of a corporation seeking to avoid personal liability by signing a promissory note and providing the corporation's name, the officer's signature, and the officer's position in the corporation.¹¹ On the other hand, one may be personally liable on a note signed in both an individual capacity and as an officer of a corporation.¹²

Comment:

There are many ways in which there can be ambiguity about a signature, but if the form of the signature unambiguously shows that it is made on behalf of an identified represented person the agent is not liable, as where an instrument is signed “P, by A, Treasurer.” The requirement of the 1990 version of Article 3 that the represented person be identified in the instrument is intended to reject the decision under the 1952 version of Article 3, which required that the instrument state the legal name of the represented person.¹³

Except as otherwise provided with regard to signing checks,¹⁴ if the form of the signature does not show unambiguously that the signature is made in a representative capacity, or if the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.¹⁵ For example, an individual identified numerous times as the "maker" of promissory notes signed to obtain financing for a limited liability company (LLC), and who affixed a signature to the notes with no indication of signing in a representative capacity, was personally liable as the "maker" of the notes, as there was no ambiguity as to capacity in which the individual signed, though company's name also appeared in signature block on the notes, and though individual, after apparently signing notes as "maker," also executed guarantees.¹⁶ There was no ambiguity on the face of the instrument concerning the capacity in which a 25% owner of a corporate borrower signed a promissory note, where the owner signed first "as President" of the corporation and then signed a second time "individually," and the first signature was clearly in a representative capacity, while the borrower signed the second time exactly as the borrower would have if it had been the intention to be bound individually.¹⁷ When trustees purportedly signed promissory notes on behalf of a trust, with the handwritten term "trustee" next to their signatures, but the trust was not identified in the notes, the question whether the trustees were individually liable on the notes was governed by the U.C.C. provision since it displaces general principles of contract law; a mortgage may not be read together with the notes to determine if the notes were signed in a representative capacity.¹⁸ An individual was personally liable on a promissory note, despite a claim that the individual signed as an agent for a corporation, when the individual was identified in the body of the note as a debtor, together with the corporation, the word "debtor" appeared below the signature, and there was no evidence that the individual ever communicated the intent not to be personally liable.¹⁹ Ambiguous promissory notes that a debtor signed, without qualifying the signature to indicate a signing in a representative capacity as president and sole shareholder of a corporation, were interpreted as constituting personal obligations, even though the corporation's name appeared immediately above the signature line, where the loan proceeds were used in the debtor's separate business venture, and the notes each began with the words "I promise to pay."²⁰

Comment:

In each of the following cases, John Doe is liable on the instrument to a holder in due course without notice that Doe was not intended to be liable, since Doe's signature does not unambiguously show that Doe was signing as agent for an identified principal: Case No. 1. Doe signs "John Doe" without indicating in the note that Doe is signing as agent. The note does not identify Richard Roe as the represented person. Case No. 2. Doe signs "John Doe, Agent" but the note does not identify Richard Roe as the represented person. Case No. 3. The name "Richard Roe" is written on the note and immediately below that name Doe signs "John Doe" without indicating that Doe signed as agent.²¹

Practice Tip:

To the extent that an ambiguity exists concerning the capacity in which an agent signed a note, evidence of the parties' intent is necessary to resolve the issue of the agent's liability, and to ascertain whether the parties intended that the agent would be personally liable or only intended to bind the principal.²² While parol evidence is admissible in litigation to supply either the identity of the principal or the signer's agency when an ambiguity exists,²³ it is not admissible in the absence of any ambiguity,²⁴ nor to show intent for the purpose of relieving liability when the litigation does not involve the immediate parties, as where an assignee of a note brings an action against its maker.²⁵

It is the form of the signature on a note, instead of other printed information appearing on the face of the note, that governs the capacity in which the signer executed the note and the resulting liability.²⁶ The power to sign an instrument on behalf of another, so as to bind the represented person, may rest on express, implied, or apparent authority.²⁷

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Footnotes

- 1 [U.C.C. § 1-201\(b\)\(33\).](#)
- 2 [U.C.C. § 3-402, Official Comment 1.](#)
- 3 [U.C.C. § 3-402\(a\).](#)
The indorsement of several notes payable to a company by its president, who either signed only the president's name or wrote "Pres." after the signature, constituted the signature of the company, where there was no question of the president's authority, or any reason to doubt the president's intention to effect a transfer of the notes. [Security Pacific Nat. Bank v. Chess](#), 58 Cal. App. 3d 555, 129 Cal. Rptr. 852, 19 U.C.C. Rep. Serv. 544 (2d Dist. 1976).
- 4 [Soultz Farms, Inc. v. Schafer](#), 797 N.W.2d 92, 74 U.C.C. Rep. Serv. 2d 619 (Iowa 2011).
- 5 [Suttles v. Thomas Bearden Co.](#), 152 S.W.3d 607 (Tex. App. Houston 1st Dist. 2004).
- 6 [U.C.C. § 3-402, Official Comment 2.](#)
- 7 [U.C.C. § 3-402\(b\)\(1\).](#)
- 8 [Williams v. Bell](#), 402 S.W.3d 28 (Tex. App. Houston 14th Dist. 2013).
A payroll services company that opened an account and signed and issued checks in its representative capacity was not liable for dishonored checks; instead, the employer in whose name the checks were drawn and whose identity and location were fully disclosed on the face of the checks was liable. [Triffin v. Ameripay, LLC](#), 368 N.J. Super. 587, 847 A.2d 628, 53 U.C.C. Rep. Serv. 2d 573 (App. Div. 2004).
- 9 [Williams v. Bell](#), 402 S.W.3d 28 (Tex. App. Houston 14th Dist. 2013).
- 10 [Schaffer v. First Merit Bank, N.A.](#), 186 Ohio App. 3d 173, 2009-Ohio-6146, 927 N.E.2d 15 (9th Dist. Lorain County 2009).
- 11 [Orum Stair, LLC v. GJJG Ents., LLC](#), 2016-Ohio-7064, 72 N.E.3d 190 (Ohio Ct. App. 10th Dist. Franklin County 2016).
- 12 [Singleton v. American Sec. Bank of Ville Platte, Inc.](#), 849 So. 2d 72, 51 U.C.C. Rep. Serv. 2d 789 (La. Ct. App. 3d Cir. 2003).

13 U.C.C. § 3-402, Official Comment 2.

14 § 46.

15 U.C.C. § 3-402(b)(2).

A restaurant employee was personally liable on a promissory note executed to pay for extra work performed by a contractor during renovation of the restaurant, where the note did not name the restaurant owner as the party represented or indicate that the employee was signing in a representative capacity. [Formica Const. Co., Inc. v. Mills](#), 9 Misc. 3d 398, 801 N.Y.S.2d 713, 58 U.C.C. Rep. Serv. 2d 605 (N.Y. City Civ. Ct. 2005).
16 [In re Bedrock Marketing, LLC](#), 404 B.R. 929, 79 Fed. R. Evid. Serv. 597, 68 U.C.C. Rep. Serv. 2d 694 (Bankr. D. Utah 2009) (Utah law).

17 [Agia v. Ossi](#), 249 So. 3d 672 (Fla. 2d DCA 2018).

18 [Mundaca Inv. Corp. v. Febba](#), 143 N.H. 499, 727 A.2d 990, 38 U.C.C. Rep. Serv. 2d 464 (1999).

19 [Caraway v. Land Design Studio](#), 47 S.W.3d 696 (Tex. App. Austin 2001).

20 [In re Tabor](#), 232 B.R. 85 (Bankr. N.D. Ohio 1999).

21 U.C.C. § 3-402, Official Comment 2.

22 [In re Tabor](#), 232 B.R. 85 (Bankr. N.D. Ohio 1999).

23 [In re Bedrock Marketing, LLC](#), 404 B.R. 929, 79 Fed. R. Evid. Serv. 597, 68 U.C.C. Rep. Serv. 2d 694 (Bankr. D. Utah 2009) (Utah law).

24 [Agia v. Ossi](#), 249 So. 3d 672 (Fla. 2d DCA 2018).

25 [Empire of America Federal Sav. Bank v. Brady](#), 776 F. Supp. 1571, 17 U.C.C. Rep. Serv. 2d 1191 (S.D. Fla. 1991).

26 [Avery v. Whitworth](#), 202 Ga. App. 508, 414 S.E.2d 725, 17 U.C.C. Rep. Serv. 2d 818 (1992).

27 [Littky & Mallon v. Michigan Nat. Bank of Detroit](#), 94 Mich. App. 29, 287 N.W.2d 359, 28 U.C.C. Rep. Serv. 715 (1979).

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11 Am. Jur. 2d Bills and Notes § 46

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Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

B. Execution of Bills and Notes

1. Signature for Execution of Bills and Notes

§ 46. Agent or representative signing for execution of instrument—Checks

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1), 123(2)

Article 3 of the Uniform Commercial Code (UCC) provides that, if a representative signs the name of the represented person as drawer of a check without an indication of the representative status, and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check, if the signature is an authorized signature of the represented person.¹ Thus, authorized signatories on a corporate account may not be held personally liable for the corporation's checks.² A signatory of a dishonored check who failed to indicate on the face of the check that the signatory signed in a representative capacity may escape personal liability where there is an understanding, implicit in the course of dealing between the parties, that the signatory was acting in a representative capacity; however, unless the defendant makes an affirmative demonstration that the taker of the note knew or understood that the signer intended to execute the instrument in a representative status only, there can be no defense that, notwithstanding the form of the note, representative liability was otherwise established between the parties.³

Comment:

If the check identifies the represented person, the agent who signs on the signature line does not have to indicate agency status. Virtually all checks used today are in personalized form and identify the person on whose account the check is drawn. In this case, nobody is deceived into thinking that the person signing the check is meant to be liable.⁴

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Footnotes

- 1 [U.C.C. § 3-402\(c\)](#).
A debtor's son was not personally liable, even though the son signed a check that the creditors claimed was a promissory note, where the instrument met the statutory definition of a check, and the son signed the check in a representative capacity for the father's sole proprietorship, written on the company's account. [Billingsley v. Smith](#), 85 Ark. App. 128, 147 S.W.3d 697 (2004).
An employee who signed only the employee's name on a check that was imprinted with the name of an employer was not personally liable when the check was returned by the bank for insufficient funds, even though the employee did not note on the check that the signature was in a representative capacity on behalf of the employer. [Peterson v. Holtrachem, Inc.](#), 239 Ga. App. 838, 521 S.E.2d 648, 40 U.C.C. Rep. Serv. 2d 527 (1999).
- 2 [Medina v. Wyche](#), 796 So. 2d 622, 45 U.C.C. Rep. Serv. 2d 824 (Fla. 3d DCA 2001); [Helmer v. Rumarson Technologies, Inc.](#), 245 Ga. App. 598, 538 S.E.2d 504 (2000); [Diversified Industries, Inc. v. Captains of Guard, Inc.](#), 66 U.C.C. Rep. Serv. 2d 58 (Minn. Ct. App. 2008).
- 3 [Finkel v. Romanowicz](#), 577 F.3d 79, 70 U.C.C. Rep. Serv. 2d 118 (2d Cir. 2009) (N.Y. law).
- 4 [U.C.C. § 3-402](#), Official Comment 3.

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11 Am. Jur. 2d Bills and Notes § 47

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes


B. Execution of Bills and Notes

1. Signature for Execution of Bills and Notes

§ 47. Unauthorized signature in execution of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  54, 61

Trial Strategy

[Bank's Liability for Payment of Check or Withdrawal on Less Than Required Number of Signatures, 25 Am. Jur. Proof of Facts 2d 165](#)

Forms

Forms relating to unauthorized signatures, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that, unless otherwise provided in Article 3 or in Article 4 governing bank deposits and collections, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value; an unauthorized signature may be ratified for all purposes of Article 3.¹

Definition:

Under the general definitional provisions of Article 1 of the UCC, an “unauthorized” signature means a signature made without actual, implied, or apparent authority, and includes a forgery.²

While procedural irregularities in a promissory note, namely that it is forged and not signed by the necessary corporate officers, make it, at most, voidable, rather than void,³ the validity of a check is dependent on the genuineness of its signature.⁴

An unauthorized signature on negotiable instrument cannot bind a party, unless the unauthorized signature is ratified⁵ in good faith.⁶ Ratification of a forged note occurs when the party to be charged with ratification clearly evinces an intent to abide and be bound by the act, with the intent to be bound being express, or implied from the party's acts or deeds; the question is one of fact, looking at the totality of the circumstances.⁷ A party can ratify the party's unauthorized signature on a contract either expressly or by conduct, binding the party to the contract as if the signature had been authorized.⁸

Comment:

Ratification is a retroactive adoption of the unauthorized signature by the person whose name is signed and may be found from conduct as well as from express statements; for example, it may be found from the retention of benefits received in the transaction with knowledge of the unauthorized signature. Although the forger is not an agent, ratification is governed by the rules and principles applicable to ratification of unauthorized acts of an agent.⁹

The “except” clause of the foregoing statutory provision states the generally accepted rule that the unauthorized signature, while it is wholly inoperative as that of the person whose name is signed, is effective to impose liability on the signer or to transfer any rights that the signer may have in the instrument.¹⁰ The signer's liability is not in damages for breach of warranty of authority, but is full liability on the instrument in the capacity in which the signer signed. It is, however, limited to parties who take or pay the instrument in good faith, and one who knows that the signature is unauthorized may not recover from the signer on the instrument.¹¹

Only the malefactor may be held liable on a forged or counterfeit instrument; the purported maker may not.¹² If the drawer's signature is forged, that person is not liable, since the drawer's valid signature does not appear on the instrument.¹³

A signature is not “unauthorized” if it is made with actual authority.¹⁴

If the signature of more than one person is required to constitute the signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.¹⁵

Definition:

Under the general definitional provisions of Article 1 of the UCC, the term “organization” means a person other than an individual.¹⁶

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Footnotes

- 1 U.C.C. § 3-403(a).
- 2 U.C.C. § 1-201(b)(41).
- 3 [Stoudemire v. HSBC Bank USA](#), 333 Ga. App. 374, 776 S.E.2d 483 (2015).
A forged note is voidable, unless ratified. [Anderson v. Rizza Chevrolet, Inc.](#), 9 F. Supp. 2d 908 (N.D. Ill. 1998) (Ill. law).
- 4 [Morris James LLP v. Continental Cas. Co.](#), 928 F. Supp. 2d 816 (D. Del. 2013) (Del. law).
- 5 [Stine Seed Company v. A & W Agribusiness, LLC](#), 862 F.3d 1094, 98 Fed. R. Serv. 3d 336 (8th Cir. 2017) (Iowa law); [Southtrust Bank of Georgia v. Parker](#), 226 Ga. App. 292, 486 S.E.2d 402, 33 U.C.C. Rep. Serv. 2d 136 (1997).
- 6 [Davison v. Citizens Bank & Trust Company](#), 338 Ga. App. 671, 791 S.E.2d 437, 90 U.C.C. Rep. Serv. 2d 741 (2016) (not established).
- 7 [Anderson v. Rizza Chevrolet, Inc.](#), 9 F. Supp. 2d 908 (N.D. Ill. 1998) (Ill. law).
- 8 [Stine Seed Company v. A & W Agribusiness, LLC](#), 862 F.3d 1094, 98 Fed. R. Serv. 3d 336 (8th Cir. 2017) (Iowa law); [Wang v. Wang](#), 447 N.W.2d 519, 10 U.C.C. Rep. Serv. 2d 890 (S.D. 1989).
- 9 U.C.C. § 3-403, Official Comment 3.
- 10 U.C.C. § 3-403, Official Comment 2.
- 11 U.C.C. § 3-403, Official Comment 2.
- 12 [Triffin v. Pomerantz Staffing Services, LLC](#), 370 N.J. Super. 301, 851 A.2d 100, 53 U.C.C. Rep. Serv. 2d 927 (App. Div. 2004).
- 13 [Canfield v. Bank One, Texas, N.A.](#), 51 S.W.3d 828, 45 U.C.C. Rep. Serv. 2d 571 (Tex. App. Texarkana 2001).
- 14 [Kelly v. Central Bank and Trust Co. of Denver](#), 794 P.2d 1037, 12 U.C.C. Rep. Serv. 2d 1089 (Colo. App. 1989).
- 15 U.C.C. § 3-403(b).
- 16 U.C.C. § 1-201(b)(25).

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11 Am. Jur. 2d Bills and Notes § 48

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Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes


B. Execution of Bills and Notes

2. Date of Execution of Bills and Notes

§ 48. Requirement of date of execution of instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  8, 34

Under Article 3 of the Uniform Commercial Code (UCC), the date of issue is not an essential element of commercial paper, and omission of a date does not generally render an instrument incomplete unless it is payable on a fixed time after the date.¹

The presumption that the date on an instrument is correct is not conclusive, and may be overcome by parol evidence that the instrument was in fact made on another date.² When the date of a check is a disputed fact in a criminal prosecution, it will not be presumed that the date is correct.³

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Footnotes

- ¹ § 103.
- ² *Pazol v. Citizens Nat. Bank of Sandy Springs*, 110 Ga. App. 319, 138 S.E.2d 442, 2 U.C.C. Rep. Serv. 330 (1964).
- ³ *People v. Tinsley*, 58 N.Y.2d 990, 461 N.Y.S.2d 1005, 448 N.E.2d 790 (1983).

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11 Am. Jur. 2d Bills and Notes § 49

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2. Date of Execution of Bills and Notes

§ 49. Antedating or postdating of instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  8, 34

A.L.R. Library

[Extent of bank's liability for paying postdated check, 31 A.L.R.4th 329](#)

Forms

Forms relating to date on note, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that an instrument may be antedated or postdated, and the date stated determines the time of payment if the instrument is payable at a fixed period after date.¹ Except as otherwise provided by the provision on when a bank may charge a postdated check against a customer's account,² an instrument payable on demand is not payable before the date of the instrument.³

A postdated check is not, by reason of postdating, an invalid instrument⁴ or conditional.⁵ The negotiability of a check is not affected by the fact that it was postdated,⁶ and thus the fact that a check is postdated does not prevent one from becoming a holder in due course.⁷

When a postdated check is honored by the drawee bank, the payment takes effect as of the date of the check.⁸

Because a postdated check is a promise to pay at a future time, it cannot be the basis of obtaining goods under false pretenses.⁹

Where interest-bearing paper is dated earlier than the actual date when the money is loaned, the act of antedating will be regarded as manifesting an intention to exact usurious interest, when there is no apparent reason why the paper was backdated.¹⁰ Thus, it may be shown that a note was antedated to conceal the fact that it was usurious.¹¹ The statute of limitations runs from the date on an antedated demand note.¹²

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Footnotes

- 1 U.C.C. § 3-113(a).
- 2 Am. Jur. 2d, Banks and Financial Institutions § 883.
- 3 U.C.C. § 3-113(a).
- 4 *How v. Fulkerson*, 22 Ariz. App. 467, 528 P.2d 853, 15 U.C.C. Rep. Serv. 1099 (Div. 2 1974); *Esecson v. Bushnell*, 663 P.2d 258, 35 U.C.C. Rep. Serv. 888 (Colo. App. 1983); *Triffin v. Liccardi Ford, Inc.*, 417 N.J. Super. 453, 10 A.3d 227, 73 U.C.C. Rep. Serv. 2d 400 (App. Div. 2011); *Thompson v. Adcox*, 63 S.W.3d 783 (Tenn. Ct. App. 2001).
- 5 *In re J.I.C. Installations, Inc.*, 109 B.R. 43 (Bankr. S.D. N.Y. 1989) (N.Y. law); *Eckley v. Steinbrecher*, 482 P.2d 392 (Colo. App. 1971).
- 6 *In re J.I.C. Installations, Inc.*, 109 B.R. 43 (Bankr. S.D. N.Y. 1989) (N.Y. law); *RR Maloan Investments, Inc. v. New HGE, Inc.*, 428 S.W.3d 355, 83 U.C.C. Rep. Serv. 2d 311 (Tex. App. Houston 14th Dist. 2014).
The negotiability of a postdated check is deferred. *Eckley v. Steinbrecher*, 482 P.2d 392 (Colo. App. 1971).
- 7 *Aryeh v. Eastern Intern.*, 54 A.D.2d 850, 388 N.Y.S.2d 286, 20 U.C.C. Rep. Serv. 961 (1st Dep't 1976); *Liles Bros. & Son v. Wright*, 638 S.W.2d 383, 34 U.C.C. Rep. Serv. 1174 (Tenn. 1982); *Howells, Inc. v. Nelson*, 565 P.2d 1147 (Utah 1977).
- 8 *In re Channel Home Centers, Inc.*, 989 F.2d 682, 137 A.L.R. Fed. 627 (3d Cir. 1993).
- 9 *State v. McCutcheon*, 284 S.C. 524, 327 S.E.2d 372 (Ct. App. 1985).
- 10 *Copeland v. Anderson*, 15 Ariz. App. 60, 485 P.2d 1177 (Div. 1 1971).
- 11 *Sud v. Morris*, 492 S.W.2d 335 (Tex. Civ. App. Beaumont 1973).
- 12 *Cantonwine v. Fehling*, 582 P.2d 592, 24 U.C.C. Rep. Serv. 904 (Wyo. 1978).

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Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes  49, 119 to 122, 123(3), 153, 279

A.L.R. Library

A.L.R. Index, Accommodation Party or Paper

A.L.R. Index, Bills and Notes

A.L.R. Index, Checks and Drafts

A.L.R. Index, Uniform Commercial Code

West's A.L.R. Digest, Bills and Notes  49, [119](#) to [122](#), [123\(3\)](#), [153](#), [279](#)

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11 Am. Jur. 2d Bills and Notes § 50

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1. In General

§ 50. Definition or identification of parties to instruments

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  119, 120

Article 3 of the Uniform Commercial Code (UCC) defines the term “party” to mean a party to an instrument.¹ The drawer of a draft is the party who signs or is identified in the draft as the person ordering payment.² The drawee is the person ordered in a draft to make payment.³ An acceptor is a drawee who has accepted a draft.⁴ Drawees in succession are not permitted, because the holder should not be required to make more than one presentment, and on the first dishonor should have recourse against the drawer and indorsers.⁵

The maker of a note is one who signs a note or who is identified in the note as the person undertaking to pay,⁶ as may constitute two or more persons, each being bound thereby as cosigners.⁷ A comaker is a party to a contract, and a person is a comaker if the contract personally binds that person, jointly and severally, with a principal.⁸

A payee is one to whom money is paid or payable, especially a party named in commercial paper as the recipient of the payment.⁹

A check typically involves three parties: (1) the “drawer” who writes the check; (2) the “payee,” to whose order the check is written; and (3) the “drawee” or “payor bank,” the bank that has the drawer’s checking account from which the check is to be paid.¹⁰ The issuance of a check obligates only two parties: the drawee bank, and the drawer, who is the signatory.¹¹ There may also be additional parties to either a draft or a note, namely, guarantors or sureties, indorsers, including the payee,¹² or transferees or holders other than the payee.¹³

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Footnotes

- 1 U.C.C. § 3-103(a)(10).
- 2 U.C.C. § 3-103(a)(5).
- 3 U.C.C. § 3-103(a)(4).
- 4 U.C.C. § 3-103(a)(1).
- 5 U.C.C. § 3-103, Official Comment 2.
- 6 U.C.C. § 3-103(a)(7).
- 7 *Baptist Health v. Smith*, 536 F.3d 869 (8th Cir. 2008) (Ark. law); *Wehle v. Moroczko*, 151 A.D.3d 1846, 57 N.Y.S.3d 322 (4th Dep't 2017).
- 8 *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 94 U.C.C. Rep. Serv. 2d 241 (Minn. Ct. App. 2017).
- 9 §§ 53 et seq.
- 10 *Mills v. U.S. Bank*, 166 Cal. App. 4th 871, 83 Cal. Rptr. 3d 146, 66 U.C.C. Rep. Serv. 2d 754 (4th Dist. 2008).
- 11 *In re Dryja*, 259 B.R. 629 (Bankr. N.D. Ohio 2001).
- 12 §§ 68 et seq.
- 13 §§ 214 et seq.

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§ 51. Identical parties to instruments

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 119

Under Article 3 of the Uniform Commercial Code (UCC), the drawer and the drawee may be the same person, since Article 3 provides that the order to pay may be addressed to any person, including the person giving the instruction.¹

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Footnotes

¹ [U.C.C. § 3-103\(a\)\(8\)](#).

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§ 52. Government as party to instrument

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West's Key Number Digest

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Commercial paper issued by the government is usually governed by the same rules as apply to other paper of the same type, and the government has the same liability as any other drawer or maker.¹

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Footnotes

- ¹ [U.S. v. Bank of New York, Nat. Banking Ass'n, 219 F. 648 \(C.C.A. 2d Cir. 1914\)](#).
As to treasury obligations not being within Article 3, see [§ 5](#).
As to government bonds, notes, and other securities, see [Am. Jur. 2d, Public Securities and Obligations §§ 1 et seq.](#)

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2. Payees Under Instruments

a. General Rules Governing Payees Under Instruments

§ 53. Necessity of payee under instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  119, 153

Under Article 3 of the Uniform Commercial Code (UCC), a check typically involves the “payee,” to whose order the check is written.¹ The identity of the payee is not determined by the name written on the instrument,² but by the intent of the signer or issuer.³ A valid negotiable instrument that is not payable to the bearer must be payable to a determinate payee.⁴

A promissory note payable only to an identified person, and not stating that it is payable to order, is not a negotiable instrument.⁵

The maker or drawer need not specify the payee, if the maker leaves a blank in the instrument for that purpose; the person in possession of the instrument may then fill in the blank and specify the payee.⁶

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Footnotes

- ¹ [Mills v. U.S. Bank](#), 166 Cal. App. 4th 871, 83 Cal. Rptr. 3d 146, 66 U.C.C. Rep. Serv. 2d 754 (4th Dist. 2008).
- ² [Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A.](#), 174 Cal. App. 4th 883, 94 Cal. Rptr. 3d 672, 69 U.C.C. Rep. Serv. 2d 336 (2d Dist. 2009).
- ³ [§ 55](#).
- ⁴ [Cohen v. Lincoln Sav. Bank of Brooklyn](#), 275 N.Y. 399, 10 N.E.2d 457, 112 A.L.R. 1424 (1937).
As to payee of bearer paper, see [§ 54](#).

5 § 37.
6 § 103.

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11 Am. Jur. 2d Bills and Notes § 54

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§ 54. Necessity of payee under instrument—Payee of bearer paper

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  119, 153

Forms

Forms relating to note payable to bearer, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), a negotiable instrument payable to bearer need not state a payee.¹

Definition:

Under the general definitions provisions of Article 1 of the UCC, the term “bearer” is defined as the person in possession of an instrument payable to bearer or indorsed in blank.²

The payee of such an instrument may be described by stating that the instrument is payable to the bearer or to the order of the bearer, or by otherwise indicating that the person in possession of the instrument is entitled to payment.³ Another way to describe the payee of a bearer instrument is for the instrument to state that it is payable to or to the order of cash, or otherwise to indicate that it is not payable to an identified person.⁴

The addition of an identified payee to a check that is otherwise a bearer instrument is insufficient to transform the legal effect of the check because it is still a bearer instrument and the transferee of the check is able to rely on the bearer term.⁵

The concepts of bearer and order are mutually exclusive; an instrument payable to bearer cannot be payable to order, and the fact that a person added the person's name on the payee line after "Cash" does not change its effect as bearer paper.⁶

A note that contained a specific sum of money in the blank intended for the name of the payee qualified as "bearer paper," under U.C.C. criteria for negotiable instruments.⁷

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Footnotes

- 1 [U.C.C. § 3-109\(a\)\(2\).](#)
As to words of negotiability in instruments as payable to order or to bearer, see [§ 37](#).
- 2 [U.C.C. § 1-201\(b\)\(5\).](#)
- 3 [U.C.C. § 3-109\(a\)\(1\).](#)
- 4 [U.C.C. § 3-109\(a\)\(3\).](#)
A note that had a specific amount of money in the blank intended for the name of the payee qualified as bearer paper. [Waldron v. Delffs](#), 988 S.W.2d 182, 39 U.C.C. Rep. Serv. 2d 132 (Tenn. Ct. App. 1998).
- 5 [State v. Herrera](#), 130 N.M. 85, 2001-NMCA-007, 18 P.3d 326, 44 U.C.C. Rep. Serv. 2d 186 (Ct. App. 2000).
- 6 [State v. Herrera](#), 130 N.M. 85, 2001-NMCA-007, 18 P.3d 326, 44 U.C.C. Rep. Serv. 2d 186 (Ct. App. 2000).
- 7 [Waldron v. Delffs](#), 988 S.W.2d 182, 39 U.C.C. Rep. Serv. 2d 132 (Tenn. Ct. App. 1998).

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§ 55. Determining payee under instrument by issuer's intent

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West's Key Number Digest

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Forms

Forms relating to "to whom payable," see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [[Westlaw®\(r\) Search Query](#)]

Forms relating to intent of maker, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Forms relating to change in payee name, see Am. Jur. Pleading and Practice Forms, Commercial Code [[Westlaw®\(r\) Search Query](#)]

Under Article 3 of the Uniform Commercial Code (UCC), the person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument.¹ The instrument is payable to the person intended by the signer, even if that person is identified in the instrument by a name or other identification that is not that of the intended person.² It is the intent of the issuer that is dispositive of the identity of the proper payee, not the name on the instrument;³ the proper payee on a check is determined by the intent of the person who signed it, even if the intended payee is identified on the check by a name or other identification that is not that of the intended person.⁴

Observation:

The described provision states the general rule that the person to whom an instrument is payable is determined by the intent of the person, whether or not authorized, who signs the instrument. If X signs a check as drawer of a check on X's account, the intent of X controls; if X, as president of Corporation, signs a check as president in behalf of Corporation as drawer, the intent of X controls; if X forges Y's signature as drawer of a check, the intent of X also controls. Y is referred to as the drawer of the check because the signing of Y's name identifies Y as the drawer, but since Y's signature was forged Y has no liability as drawer unless some other provision of Article 3 or Article 4 makes Y liable.⁵

If more than one person signs in the name or behalf of the issuer of an instrument, and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.⁶

If the signature of the issuer of an instrument is made by automated means, such as a check writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.⁷

Caution:

Parol evidence offered for the purpose of identifying a payee is not admissible if the instrument is unambiguous.⁸

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Footnotes

- 1 U.C.C. § 3-110(a).
- 2 U.C.C. § 3-110(a).
As to imposters and fictional payees, see § 57.
- 3 *Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A.*, 174 Cal. App. 4th 883, 94 Cal. Rptr. 3d 672, 69 U.C.C. Rep. Serv. 2d 336 (2d Dist. 2009).
- 4 *Sorrel v. Eagle Healthcare, Inc.*, 110 Wash. App. 290, 38 P.3d 1024 (Div. 1 2002).
- 5 U.C.C. § 3-110, Official Comment 1.
- 6 U.C.C. § 3-110(a).
- 7 U.C.C. § 3-110(b).

8 [Schwartz v. Disneyland Vista Records, 383 So. 2d 1117, 29 U.C.C. Rep. Serv. 1321 \(Fla. 4th DCA 1980\).](#)

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§ 56. Manner of identifying payee in instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  119, 153

Under Article 3 of the Uniform Commercial Code (UCC), a person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number.¹ If an instrument is payable to an account and the account number is identified only by number, the instrument is payable to the person to whom the account is payable, but if the instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person regardless of whether that person is the owner of the account identified by that number.²

Comment:

Where both a name and account number are used to identify a payee, the name of the person controls, so that the named person will be entitled to negotiate the check even if the account number specified is some other person's account. For example, where a check is payable to "X Corporation Account No. 12345 in Bank of Podunk," the check is payable to X Corporation and can be negotiated by X Corporation even if Account No. 12345 is some other person's account or the check is not deposited in that account. In other cases, the payee is identified by an account number and the name of the owner of the account is not stated.³



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Footnotes

- 1 [U.C.C. § 3-110\(c\).](#)
- 2 [U.C.C. § 3-110\(c\)\(1\).](#)
- 3 [U.C.C. § 3-110, Official Comment 2.](#)

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§ 57. Impostor payee under instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279

Trial Strategy

[Proof of Fraud in the Making of Commercial Paper and the Resulting Consequences, 93 Am. Jur. Proof of Facts 3d 141](#)

Under Article 3 of the Uniform Commercial Code (UCC), if an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.¹ The imposter rule provides that default loss in cases involving imposters lies with the issuer of the check.²

If a person whose intent determines to whom an instrument is payable does not intend the person identified as the payee to have any interest in the instrument, or if the person identified as the payee of an instrument is a fictitious person, then (1) any person in possession of the instrument is its holder, and (2) an indorsement by any person in the name of the payee stated in

the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.³

Comment:

If a check payable to an impostor, a payee not intended to have an interest in the check, or to a fictitious payee is paid, the effect of the provisions described above is to place the loss on the drawer of the check rather than on the drawee or the depository bank that took the check for collection.⁴

An imposter is one who pretends to be someone else to deceive others, or a person who practices deception under an assumed character, identity, or name, rather than someone who correctly identifies oneself but suggests through forged documents or signatures that another person is involved in the financial or business transaction (which would implicate the fictitious payee rule).⁵ Thus, the imposter rule applies only when the issuance of a check has been accomplished through impersonation of the payee.⁶ When a person is honestly identified, but falsely purports to be an agent of another, the person is simply misrepresenting a status, rather than misrepresenting identity, for purposes of the imposter rule.⁷ The imposter rule applied when a check cashing company cashed a check and distributed the proceeds to an imposter, having fraudulently obtained a loan from the issuer of the check and indorsed the check, since the imposter, who appeared in person at both the issuer's office and the company's store and who presented a forged driver's license containing the imposter's photograph but the name and personal identification information of the victim, posed as another person to obtain the benefits of the check.⁸

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Footnotes

- 1 U.C.C. § 3-404(a).
- 2 State Sec. Check Cashing, Inc. v. American General Financial Services (DE), 409 Md. 81, 972 A.2d 882, 69 U.C.C. Rep. Serv. 2d 683 (2009).
- 3 U.C.C. § 3-404(b).
- 4 As to the effect of the issuer's intent, see § 55.
- 5 U.C.C. § 3-404, Official Comment 3.
- 6 Advocate Health and Hospitals Corp. v. Bank One, N.A., 348 Ill. App. 3d 755, 284 Ill. Dec. 710, 810 N.E.2d 500, 53 U.C.C. Rep. Serv. 2d 175 (1st Dist. 2004).
- 7 Title Ins. Co. v. Comerica Bank - California, 27 Cal. App. 4th 800, 32 Cal. Rptr. 2d 735, 24 U.C.C. Rep. Serv. 2d 584 (6th Dist. 1994).
- 8 Advocate Health and Hospitals Corp. v. Bank One, N.A., 348 Ill. App. 3d 755, 284 Ill. Dec. 710, 810 N.E.2d 500, 53 U.C.C. Rep. Serv. 2d 175 (1st Dist. 2004).
- 9 State Sec. Check Cashing, Inc. v. American General Financial Services (DE), 409 Md. 81, 972 A.2d 882, 69 U.C.C. Rep. Serv. 2d 683 (2009).

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2. Payees Under Instruments

a. General Rules Governing Payees Under Instruments

§ 58. Fictitious payee under instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 279

Trial Strategy

[Proof of Fraud in the Making of Commercial Paper and the Resulting Consequences, 93 Am. Jur. Proof of Facts 3d 141](#)

Under Article 3 of the Uniform Commercial Code (UCC), if a person whose intent determines to whom an instrument is payable does not intend the person identified as the payee to have any interest in the instrument, or if the person identified as the payee of an instrument is a fictitious person, then (1) any person in possession of the instrument is its holder, and (2) an indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.¹ The fraudulent intent of the signer is not necessarily required for an indorsement of a check to be deemed effective because the signer did not intend that the named payee would have an interest in the check and the check was indorsed or deposited to an account in a name substantially similar to that of the named payee.² For purposes of the rule, the phrase "person identified as payee" refers to the named payee, not to the intended payee.³

The fictitious payee rule places the loss on the drawer when an employee supplies the drawer with the name of the payee intending that the named payee have no interest in the check, and an indorsement is forged in the name of the named payee.⁴ The

rule's effect is to treat certain fraudulent indorsements as genuine, but is only for the benefit of a holder subsequent to the forgery of the indorsement; it does not improve the status of the named payee or of the person who actually executes the indorsement.⁵ The rule does not apply simply because a corporate payee was not incorporated or registered to do business in the United States.⁶

A person who signed checks made out to "Carlin Co.," "Carlin Corp.," and "Carlin Corporation" with the intent that they would be deposited with the Carlin Equities Corporation did not intend that the named payee would have no interest in the checks, and thus fictitious payee rule did not apply, even though the person who received the checks fraudulently deposited them in a personal account under the fictitious business name "Carlin Co."; the variance between the intended payee's actual name and the designation on the checks was not substantial.⁷

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Footnotes

- 1 [U.C.C. § 3-404\(b\).](#)
[As to the effect of the issuer's intent, see § 55.](#)
- 2 [Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A., 174 Cal. App. 4th 883, 94 Cal. Rptr. 3d 672, 69 U.C.C. Rep. Serv. 2d 336 \(2d Dist. 2009\).](#)
- 3 [Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A., 174 Cal. App. 4th 883, 94 Cal. Rptr. 3d 672, 69 U.C.C. Rep. Serv. 2d 336 \(2d Dist. 2009\).](#)
- 4 [Govoni & Sons Const. Co., Inc. v. Mechanics Bank, 51 Mass. App. Ct. 35, 742 N.E.2d 1094, 43 U.C.C. Rep. Serv. 2d 1058 \(2001\).](#)
- 5 [Govoni & Sons Const. Co., Inc. v. Mechanics Bank, 51 Mass. App. Ct. 35, 742 N.E.2d 1094, 43 U.C.C. Rep. Serv. 2d 1058 \(2001\).](#)
- 6 [National Union Fire Ins. Co. v. Allfirst Bank, 282 F. Supp. 2d 339, 52 U.C.C. Rep. Serv. 2d 198 \(D. Md. 2003\).](#)
- 7 [Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A., 174 Cal. App. 4th 883, 94 Cal. Rptr. 3d 672, 69 U.C.C. Rep. Serv. 2d 336 \(2d Dist. 2009\).](#)

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§ 59. Purpose to protect interest of multiple payees under instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 120

Forms

Forms relating to payable to two or more persons, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), the purpose of the provision on the effect of an instrument that is payable to two or more persons as alternative or joint¹ is to protect the interest of all the parties entitled to payment and to enable all such parties to receive payment without subjecting the maker to multiple liability.²

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Footnotes

¹ [U.C.C. § 3-110\(d\)](#).

2 McHenry County Credit Co. v. Feuerhelm, 720 F.2d 525, 37 U.C.C. Rep. Serv. 803 (8th Cir. 1983); Schranz v. I. L. Grossman, Inc., 90 Ill. App. 3d 507, 45 Ill. Dec. 654, 412 N.E.2d 1378, 30 U.C.C. Rep. Serv. 1299 (1st Dist. 1980).

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b. Multiple Payees Designated by Instruments

§ 60. Alternative payees under instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 120

Forms

Forms relating to payable to two or more persons, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), an instrument payable to the order of two or more persons in the alternative is payable to any one of them and may be negotiated, discharged, or enforced by any of them who has possession of it.¹

The purpose of the provision affording the person in possession of an instrument, payable to two or more persons alternatively, rights in the instrument that are superior to those of the alternative payee who is not in possession of the instrument, is not to designate who owns the instrument, but to designate who, as between copayees, has the right to negotiate it.² Therefore, a bank that pays one of two alternative payees without the indorsement of the other is not liable for doing so.³ As between two or more payees, one who physically possesses the negotiable instrument has presumptive evidence of title and ownership; however the

presumption is not final or conclusive, as the other payee making an adverse claim regarding the instrument's ownership bears the burden of rebutting this presumption.⁴

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Footnotes

- 1 [U.C.C. § 3-110\(d\).](#)
For a discussion of the rights of alternative payees to transfer or negotiate the paper, see [§ 176](#).
- 2 [Raichel v. Raichel, 65 S.W.3d 497, 46 U.C.C. Rep. Serv. 2d 173 \(Ky. 2001\).](#)
- 3 [Bijlani v. Nationsbank of Florida, N.A., 25 U.C.C. Rep. Serv. 2d 1165 \(Fla. Cir. Ct. 1995\).](#)
- 4 [Hattaway v. Keefe, 191 Ga. App. 315, 381 S.E.2d 569, 10 U.C.C. Rep. Serv. 2d 143 \(1989\).](#)

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§ 61. Joint payees under instrument

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[Bank's liability to nonsigning payee for payment of check drawn to joint payees without obtaining indorsement by both, 47 A.L.R.3d 537](#)

Trial Strategy

[Bank's Liability for Payment of Check or Withdrawal on Less Than Required Number of Signatures, 25 Am. Jur. Proof of Facts 2d 165](#)

Forms

Forms relating to payable to two or more persons, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code
[\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), if an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them.¹ As a result, when a note is made payable to two or more payees in the conjunctive, payment made to only one of them does not discharge the maker's obligations under the note.² An insurance check issued in the name of both the insured and the lienholder requires the indorsements of both parties.³ Payment only to the subcontractor on a joint check issued to a subcontractor and material supplier does not discharge the obligation to the supplier, since a check payable to joint payees may only be negotiated by all of them, and payment to only one payee does not result in discharge, even though delivery of the check to one joint payee constitutes delivery to all of them.⁴

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Footnotes

- 1 [U.C.C. § 3-110\(d\).](#)
For a discussion of the rights of joint payees to transfer or negotiate the paper, see [§ 176](#).
- 2 [Concepcion v. Tojeiro, 457 So. 2d 553, 39 U.C.C. Rep. Serv. 210 \(Fla. 3d DCA 1984\); General Motors Acceptance Corp. v. Abington Cas. Ins. Co., 413 Mass. 583, 602 N.E.2d 1085, 18 U.C.C. Rep. Serv. 2d 1151 \(1992\).](#)
- 3 [Peavy v. Bank South, N.A., 222 Ga. App. 501, 474 S.E.2d 690, 30 U.C.C. Rep. Serv. 2d 1128 \(1996\).](#)
- 4 [Crystaplex Plastics, Ltd. v. Redevelopment Agency, 77 Cal. App. 4th 990, 92 Cal. Rptr. 2d 197, 40 U.C.C. Rep. Serv. 2d 784 \(4th Dist. 2000\).](#)

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b. Multiple Payees Designated by Instruments

§ 62. Ambiguity in alternative or joint designation of payees under instrument

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West's Key Number Digest, Bills and Notes 120

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[Bank's Liability for Payment of Check or Withdrawal on Less Than Required Number of Signatures, 25 Am. Jur. Proof of Facts 2d 165](#)

Forms

Forms relating to payable to two or more persons, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under Article 3 of the Uniform Commercial Code (UCC), if an instrument is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.¹ For instance, if there is an ambiguity whether a check was payable jointly or alternatively, the valid signature of one payee is sufficient, even if other payees' signatures were

forged.² The burden is on the drawer of the instrument to express clearly his or her intent concerning whether the instrument is payable jointly or in the alternative.³

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Footnotes

- 1 [U.C.C. § 3-110\(d\)](#).
Where the designation of multiple payees of a check is ambiguous regarding whether it is payable jointly or alternatively, the defendant bank is not liable for paying the check to one of the copayees without the indorsement of another payee. [Bijlani v. Nationsbank of Florida, N.A.](#), 25 U.C.C. Rep. Serv. 2d 1165 (Fla. Cir. Ct. 1995).
- 2 [Coregis Ins. Co. v. Fleet Nat. Bank](#), 68 Conn. App. 716, 793 A.2d 254, 47 U.C.C. Rep. Serv. 2d 1420 (2002).
- 3 [J.R. Simplot, Inc. v. Knight](#), 139 Wash. 2d 534, 988 P.2d 955, 40 U.C.C. Rep. Serv. 2d 57 (1999).

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§ 63. Construction of particular descriptions of payees as alternative or joint

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Forms

Forms relating to payable to two or more persons, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under provisions of Article 3 of the Uniform Commercial Code (UCC) applicable to alternative¹ or joint payees under an instrument,² if the instrument is payable to “A/B,” it is payable in the alternative to A or to B.³ Since such checks are payable to two payees alternatively, they are payable to either of them and may be negotiated, discharged, or enforced by whichever of them has possession of the checks.⁴ A virgule, or forward slash, is a common usage to separate payees on negotiable instrument, meaning “or,” and if the names of the payees on instruments are separated by a virgule, the instruments are payable in the alternative, and only one indorsement is necessary.⁵

If the instrument is payable to “A and/or B,” it is payable in the alternative to A or to B.⁶ When the word “and” separates the names of two payees, the instrument is payable jointly and not alternatively.⁷

Footnotes

- 1 § 60.
- 2 § 61.
- 3 Dynalelectron Corp. v. Equitable Trust Co., 704 F.2d 737, 35 U.C.C. Rep. Serv. 1548 (4th Cir. 1983); Matter of General Microcomputer, Inc., 118 B.R. 96, 13 U.C.C. Rep. Serv. 2d 162 (Bankr. N.D. Ind. 1989); Purina Mills, Inc. v. Security Bank & Trust, 215 Mich. App. 549, 547 N.W.2d 336, 29 U.C.C. Rep. Serv. 2d 1260 (1996); Danco, Inc. v. Commerce Bank/Shore, N.A., 290 N.J. Super. 211, 675 A.2d 663, 29 U.C.C. Rep. Serv. 2d 513 (App. Div. 1996); Mumma v. Rainier Nat. Bank, 60 Wash. App. 937, 808 P.2d 767, 14 U.C.C. Rep. Serv. 2d 1119 (Div. 1 1991).
- 4 Dynalelectron Corp. v. Union First Nat. Bank, 488 F. Supp. 868, 29 U.C.C. Rep. Serv. 131 (D.D.C. 1980); Purina Mills, Inc. v. Security Bank & Trust, 215 Mich. App. 549, 547 N.W.2d 336, 29 U.C.C. Rep. Serv. 2d 1260 (1996); Kinzig v. First Fidelity Bank, N.A., 277 N.J. Super. 255, 649 A.2d 634, 25 U.C.C. Rep. Serv. 2d 125 (Law Div. 1994); Mumma v. Rainier Nat. Bank, 60 Wash. App. 937, 808 P.2d 767, 14 U.C.C. Rep. Serv. 2d 1119 (Div. 1 1991).
- 5 New Wave Technologies, Inc. v. Legacy Bank of Texas, 281 S.W.3d 99, 66 U.C.C. Rep. Serv. 2d 113 (Tex. App. El Paso 2008).
The plain meaning of a virgule is “or” when used to separate multiple payees on a negotiable instrument. J.R. Simplot, Inc. v. Knight, 139 Wash. 2d 534, 988 P.2d 955, 40 U.C.C. Rep. Serv. 2d 57 (1999).
- 6 U.C.C. § 3-110, Official Comment 4.
- 7 Pamar Enterprises, Inc. v. Huntington Banks of Mich., 228 Mich. App. 727, 580 N.W.2d 11, 35 U.C.C. Rep. Serv. 2d 1298 (1998).

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§ 64. Construction of particular descriptions of payees as alternative or joint—Ambiguous descriptions

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Forms

Forms relating to payable to two or more persons, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under provisions of Article 3 of the Uniform Commercial Code (UCC) applicable to ambiguous designations of payees as alternative or joint payees under an instrument,¹ unless checks payable to multiple payees are specifically and clearly made payable jointly or in the alternative, they are ambiguous with respect to how they are to be paid, and, therefore, are payable alternatively.² A check listing multiple payees without grammatical connectors between some of their names is ambiguous, for this purpose.³ A check that did not use the word "or" or "and" between multiple payees was ambiguous and, therefore, was payable to either of the payees, individually.⁴

The use of a virgule, or forward slash, between the payees' names, combined with a statement on the back of the checks stating that each payee should endorse the check, creates an ambiguity, allowing the payee to rely on the indorsement of a single

payee.⁵ While the use of a virgule clearly indicates “or,”⁶ use of a hyphen to separate the names of multiple payees is patently ambiguous.⁷

There is authority that an instrument payable to “A and/B” is ambiguous on its face regarding whether it is to be paid in the alternative or jointly, and if such an instrument is paid on the indorsement of one payee, the other payee will be deprived of his or her interest in the instrument, and for this reason, the instrument will be deemed payable jointly.⁸

Stacked payees are alternative, even if one payee has a factoring relationship with the other.⁹ A check made out to one payee “c/o” another name and an address, without any further qualification, such as trustee or representative, did not objectively indicate whether there were joint or alternative payees, and thus a bank did not convert the checks when it paid them with only the indorsement of the second payee.¹⁰ A check made payable to A Corp. dba B & C LLC requires the endorsement of both parties, even if the payee designation was ambiguous with regard to whether the ampersand equally joined “B” and “C LLC” as one entity that reflected the assumed name for “A Corp.”¹¹

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Footnotes

- 1 § 62.
- 2 [Pelican Nat. Bank v. Provident Bank of Maryland](#), 381 Md. 327, 849 A.2d 475, 53 U.C.C. Rep. Serv. 2d 557 (2004).
- 3 [In re Ames Dept. Stores, Inc.](#), 322 B.R. 238, 56 U.C.C. Rep. Serv. 2d 417 (Bankr. S.D. N.Y. 2005); [Harder v. First Capital Bank](#), 332 Ill. App. 3d 740, 266 Ill. Dec. 770, 775 N.E.2d 610, 48 U.C.C. Rep. Serv. 2d 1069 (4th Dist. 2002); [Pelican Nat. Bank v. Provident Bank of Maryland](#), 381 Md. 327, 849 A.2d 475, 53 U.C.C. Rep. Serv. 2d 557 (2004).
Checks that listed two payees that were not connected by “and” or “or” were ambiguous concerning whether they were payable to two payees jointly or alternatively, and thus the bank properly treated ambiguous payees as alternate payees, and cashed the checks on the endorsement of only one payee. [Allied Capital Partners, L.P. v. Bank One, Texas, N.A.](#), 68 S.W.3d 51, 47 U.C.C. Rep. Serv. 2d 615 (Tex. App. Dallas 2001).
- 4 [Mazon Associates, Inc. v. Comerica Bank](#), 195 S.W.3d 800, 60 U.C.C. Rep. Serv. 2d 418 (Tex. App. Dallas 2006).
- 5 [New Wave Technologies, Inc. v. Legacy Bank of Texas](#), 281 S.W.3d 99, 66 U.C.C. Rep. Serv. 2d 113 (Tex. App. El Paso 2008).
- 6 § 63.
- 7 [J.R. Simplot, Inc. v. Knight](#), 139 Wash. 2d 534, 988 P.2d 955, 40 U.C.C. Rep. Serv. 2d 57 (1999).
- 8 [C.H. Sanders Const. Co., Inc. v. Bankers Trust Co.](#), 123 A.D.2d 251, 506 N.Y.S.2d 58, 1 U.C.C. Rep. Serv. 2d 1563 (1st Dep't 1986).
- 9 [In re Ames Dept. Stores, Inc.](#), 322 B.R. 238, 56 U.C.C. Rep. Serv. 2d 417 (Bankr. S.D. N.Y. 2005).
- 10 [Matson Intermodal System, Inc. v. Kubis Enterprises, Ltd.](#), 385 N.J. Super. 105, 895 A.2d 1242, 59 U.C.C. Rep. Serv. 2d 648 (Law Div. 2005).
- 11 [35 City Island, LLC v. Banco Popular](#), 51 A.D.3d 504, 858 N.Y.S.2d 130 (1st Dep't 2008).

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c. Description of Payee as Representative or Represented Entity

§ 65. Agent or representative as designated payee in instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(3), 153

Forms

Forms relating to identifying person payable, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that, if an instrument is payable to a person described as an agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative.¹

Comment:

The described provision merely determines who may deal with the instrument as the holder; it does not determine ownership of the instrument or its proceeds. Under this provision, if the instrument states that it is payable to Doe, president of X Corporation, either Doe or X Corporation can be holder of the instrument.²



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Footnotes

- 1 [U.C.C. § 3-110\(c\)\(2\)\(ii\).](#)
As to the definition of “representative,” see [§ 45](#).
- 2 [U.C.C. § 3-110](#), Official Comment 3.

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§ 66. Office or officer as designated payee in instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(3), 153

A.L.R. Library

[Authority of agent to indorse and transfer commercial paper, 37 A.L.R.2d 453](#)

Article 3 of the Uniform Commercial Code (UCC) provides that an instrument may be payable to the order of an office, or a person described as holding an office, in which case it is payable to the named person, the incumbent of the office, or a successor to the incumbent.¹

Comment:

This provision merely determines who can deal with the instrument as holder, and does not determine ownership of the instrument or its proceeds.²



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Footnotes

- [1](#) [U.C.C. § 3-110\(c\)\(2\)\(iv\).](#)
- [2](#) [U.C.C. § 3-110, Official Comment 3.](#)

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11 Am. Jur. 2d Bills and Notes § 67

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§ 67. Estate, trust, fund, or organization

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(3), 153

Article 3 of the Uniform Commercial Code (UCC) provides that if an instrument is payable to a trust, an estate, or a person described as a trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, regardless of whether the beneficiary or estate is also named.¹ If an instrument is payable to a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization.²

Comment:

The provision described above merely determines who can deal with the instrument as holder; it does not determine ownership of the instrument or its proceeds.³

The surviving spouse of a deceased nursing home resident could have negotiated a check that the nursing home issued to the resident's estate, rather than to the spouse personally, where the nursing home did not dispute that the individual was the intended payee, and that intention, and not the actual entity listed as payee, controlled.⁴

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Footnotes

- 1 [U.C.C. § 3-110\(c\)\(2\)\(i\).](#)
- 2 [U.C.C. § 3-110\(c\)\(2\)\(iii\).](#)
- 3 [U.C.C. § 3-110, Official Comment 3.](#)
- 4 [Sorrel v. Eagle Healthcare, Inc., 110 Wash. App. 290, 38 P.3d 1024 \(Div. 1 2002\).](#)
As to the role of the issuer's intent, see [§ 55](#).

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11 Am. Jur. 2d Bills and Notes § 68

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

C. Parties to Bills and Notes

3. Guarantors, Accommodation Parties, and Indorsers of Bills and Notes

§ 68. Overview of guarantors, accommodation parties, and indorsers of instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  121, 122

Forms

Forms relating to guaranty of payment, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Uniform Commercial Code Legal Forms, Article 9 Secured Transactions [\[Westlaw®\(r\) Search Query\]](#)

Comment:

Article 3 of the Uniform Commercial Code (UCC) eliminates confusion engendered by separate sections in the prior version on guarantors and accommodation parties, by stating in the section relating to accommodation parties the obligation of a person who uses words of guaranty.¹

The Article 3 section on the status of accommodation parties² specifies that using words indicating that the signer is acting as surety or guarantor provides notice that the instrument was signed for accommodation.³

The rights and liabilities of makers of a note, as between themselves, depend on the contract between them and the relation they sustain to each other and to the transaction; one maker may show that the maker is in fact a surety for another.⁴ The U.C.C. does not require that the word “guaranty” be used to make a party a guarantor.⁵ A guarantor is not a party to a note,⁶ instrument,⁷ or contract,⁸ making the guarantor’s obligation separate and independent of the obligation of the principal debtor,⁹ and making a guarantor’s obligation subject to common law, rather than the UCC.¹⁰

Definition:

A guarantor is one whose promise is collateral to a primary or principal obligation on the part of another and which binds the obligor to performance in the event of nonperformance by such other, the latter being bound to perform primarily.¹¹

The matter of guaranty or suretyship may be involved with commercial paper in various ways; a person may give a guaranty of an obligation of another, for which obligation the creditor takes or has taken a note or other instrument, without involving the guarantor as a party to the instrument itself.¹² A contract of guaranty may alternatively be written and signed on the back of the instrument constituting the obligation that is guaranteed.¹³ Where a note contains several signature lines followed by the signers’ printed names and “Borrower,” and other signature lines just followed by individuals’ names, and the text of the note identifies a partnership as the borrower and states that the individuals are guarantors, those individuals are not liable as makers.¹⁴

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Footnotes

- 1 U.C.C. § 3-419, Official Comment 4.
- 2 § 70.
- 3 § 71.
- 4 *Johnson v. AgSouth Farm Credit*, 267 Ga. App. 567, 600 S.E.2d 664 (2004).
- 5 *Womack v. First State Bank of Calico Rock*, 21 Ark. App. 33, 728 S.W.2d 194 (1987).
- 6 *D.P. Solutions, Inc. v. Xplore-Tech Services Private Ltd.*, 211 N.C. App. 632, 710 S.E.2d 297 (2011).
- 7 *Venaglia v. Kropinak*, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 (Ct. App. 1998).
- 8 *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 94 U.C.C. Rep. Serv. 2d 241 (Minn. Ct. App. 2017).
- 9 *D.P. Solutions, Inc. v. Xplore-Tech Services Private Ltd.*, 211 N.C. App. 632, 710 S.E.2d 297 (2011).
Individuals signing a note only in the capacity of guarantors are not liable as makers. *Beal Bank, SSB v. Lucks*, 791 A.2d 752 (Del. Ch. 2000).
- 10 *Venaglia v. Kropinak*, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 (Ct. App. 1998).
As to liability under a separate guaranty agreement, see § 436.
- 11 *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 94 U.C.C. Rep. Serv. 2d 241 (Minn. Ct. App. 2017).
- 12 *Venaglia v. Kropinak*, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 (Ct. App. 1998).

- 13 [Peoples Trust Co. of Malone v. O'Neil](#), 273 N.Y. 312, 7 N.E.2d 244 (1937).
14 [Beal Bank, SSB v. Lucks](#), 791 A.2d 752 (Del. Ch. 2000).
As to the liability of a guarantor, see § 437.

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11 Am. Jur. 2d Bills and Notes § 69

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

C. Parties to Bills and Notes

3. Guarantors, Accommodation Parties, and Indorsers of Bills and Notes

§ 69. Status as accommodation party to instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  49, 122

Trial Strategy

[Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283](#)

Article 3 of the Uniform Commercial Code (UCC) provides that, if an instrument is issued for value given for the benefit of a party to the instrument (“accommodated party”) and another party to the instrument (“accommodation party”) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party “for accommodation.”¹

Definition:

An accommodation party is one who signs an instrument in any capacity² for the purpose of lending one's credit³ or name to another party to the instrument.⁴ An accommodation party is one who incurs⁵ or accepts liability by signing an instrument issued for value and for the benefit of another party, but who is not a direct beneficiary of the instrument proceeds.⁶

Comment:

An accommodation party is a person who signs an instrument to benefit the accommodated party, either by signing at the time value is obtained by the accommodated party or later, and who is not a direct beneficiary of the value obtained. An accommodation party will usually be a comaker or anomalous indorser. For example, if X cosigns a note of Corporation that is given for a loan to Corporation, X is an accommodation party if no part of the loan was paid to X or for X's direct benefit. This result occurs even though X may receive an indirect benefit from the loan because X is employed by Corporation or is a stockholder of Corporation, or even if X is the sole stockholder, so long as Corporation and X are recognized as separate entities.⁷

By signing a promissory note for accommodation, a person incurs liability as an accommodation party.⁸ The essential characteristic of an accommodation party is that the party is a surety,⁹ and, by lending its name to the maker, in a sense, guarantees that in the event of default by the principal obligor, the accommodation party will be liable.¹⁰ The parties' intention is an important factor in determining accommodation party status.¹¹ Besides the intent of the parties, the two primary factors usually found to indicate accommodation party status are that (1) the accommodation party did not receive a benefit from the proceeds of the instrument, and (2) the accommodation party's signature was a necessary element to the maker's receipt of the loan.¹² Otherwise stated, four factors considered in determining whether a party qualifies as an accommodation party under the U.C.C. are (1) the location of the party's signature on the note, (2) the language of the note, (3) whether the party received any loan proceeds, and (4) the intent of the parties.¹³ No one factor conclusively establishes the status as an accommodation party.¹⁴

Accommodation party status is a factual question¹⁵ to be determined based on the facts and circumstances in existence at the time the note is signed¹⁶ or issued.¹⁷

The burden of proof is on the party claiming accommodation status.¹⁸ When determining whether a signer is an accommodation party, the law looks to the real and direct benefits received in the transaction in which the negotiable instrument was issued,¹⁹ and one who only receives an indirect benefit may be an accommodation party.²⁰

Implicit in the first step of analysis to determine if a maker is an accommodation party is the proposition that the person claiming to be an accommodation party is a party to the instrument.²¹ A party who did not sign the note cannot be an accommodation party.²²

Practice Tip:

An examination of an instrument will not, in itself, disclose the existence of an accommodation relationship when there are coparties, such as comakers, and nothing is added to the instrument to show that one of them is signing for accommodation.²³

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Footnotes

- 1 U.C.C. § 3-419(a).
- 2 § 70.
- 3 *Cliff Findlay Automotive, LLC v. Olson*, 228 Ariz. 115, 263 P.3d 664, 75 U.C.C. Rep. Serv. 2d 636 (Ct. App. Div. 1 2011); *Walker v. Probandt*, 25 Neb. App. 30, 902 N.W.2d 468, 93 U.C.C. Rep. Serv. 2d 838 (2017), review denied, (May 8, 2018) and cert. denied, 139 S. Ct. 333, 202 L. Ed. 2d 223 (2018).
- 4 *Cliff Findlay Automotive, LLC v. Olson*, 228 Ariz. 115, 263 P.3d 664, 75 U.C.C. Rep. Serv. 2d 636 (Ct. App. Div. 1 2011); *Reece v. Chestatee State Bank*, 260 Ga. App. 136, 579 S.E.2d 11 (2003); *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).
- 5 *Walker v. Probandt*, 25 Neb. App. 30, 902 N.W.2d 468, 93 U.C.C. Rep. Serv. 2d 838 (2017), review denied, (May 8, 2018) and cert. denied, 139 S. Ct. 333, 202 L. Ed. 2d 223 (2018).
- 6 *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law).
- 7 U.C.C. § 3-419, Official Comment 1.
- 8 *In re Clore*, 547 B.R. 915 (Bankr. C.D. Ill. 2016) (Ill. law).
- 9 *Johnson v. AgSouth Farm Credit*, 267 Ga. App. 567, 600 S.E.2d 664 (2004); *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003); *Irish v. Woods*, 864 N.E.2d 1117, 62 U.C.C. Rep. Serv. 2d 607 (Ind. Ct. App. 2007); *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007); *Whisnant v. Carolina Farm Credit*, 204 N.C. App. 84, 693 S.E.2d 149, 72 U.C.C. Rep. Serv. 2d 301 (2010).
- 10 *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).
- 11 *Arnold v. Texas*, 498 U.S. 838, 111 S. Ct. 110, 112 L. Ed. 2d 80 (1990); *Baker v. Veneman*, 256 F. Supp. 2d 999 (E.D. Mo. 2003) (Mo. law); *In re Clore*, 547 B.R. 915 (Bankr. C.D. Ill. 2016) (Ill. law); *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law); *In re Heritage Organization, L.L.C.*, 354 B.R. 407, 61 U.C.C. Rep. Serv. 2d 952 (Bankr. N.D. Tex. 2006); *Cranfill v. Union Planters Bank, N.A.*, 86 Ark. App. 1, 158 S.W.3d 703, 53 U.C.C. Rep. Serv. 2d 287 (2004); *Walker v. Probandt*, 25 Neb. App. 30, 902 N.W.2d 468, 93 U.C.C. Rep. Serv. 2d 838 (2017), review denied, (May 8, 2018) and cert. denied, 139 S. Ct. 333, 202 L. Ed. 2d 223 (2018).
The signer's purpose or intent determines accommodation party status. *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003).
Whether one is an accommodation maker is a question of the intentions of the party claiming that status, the party alleged to be the accommodated party, and the party holding the note when the alleged accommodation maker signed the note. *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 12 *Citibank (Arizona) v. Van Velzer*, 194 Ariz. 358, 982 P.2d 833, 36 U.C.C. Rep. Serv. 2d 145 (Ct. App. Div. 2 1998); *Keesling v. T.E.K. Partners, LLC*, 861 N.E.2d 1246 (Ind. Ct. App. 2007); *Venaglia v. Kropinak*, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 (Ct. App. 1998).
- 13 *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law); *In re TML, Inc.*, 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003) (Mich. law).
- 14 *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 15 *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law); *In re TML, Inc.*, 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003) (Mich. law); *Board of County Com'ns of County of Park v. Park County Sportsmen's Ranch, LLP*, 271 P.3d 562, 75 U.C.C. Rep. Serv. 2d 909 (Colo.

- App. 2011); *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003); *Belden v. Thorkildsen*, 2007 WY 68, 156 P.3d 320, 62 U.C.C. Rep. Serv. 2d 646 (Wyo. 2007).
- 16 *Board of County Com'ns of County of Park v. Park County Sportsmen's Ranch, LLP*, 271 P.3d 562, 75 U.C.C. Rep. Serv. 2d 909 (Colo. App. 2011).
- The totality of the circumstances is considered. *In re Simpson*, 474 B.R. 656, 78 U.C.C. Rep. Serv. 2d 48 (Bankr. S.D. Ind. 2012) (Ind. law).
- 17 *In re TML, Inc.*, 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003) (Mich. law); *Cranfill v. Union Planters Bank, N.A.*, 86 Ark. App. 1, 158 S.W.3d 703, 53 U.C.C. Rep. Serv. 2d 287 (2004).
- 18 *Baker v. Veneman*, 256 F. Supp. 2d 999 (E.D. Mo. 2003) (Mo. law); *Board of County Com'ns of County of Park v. Park County Sportsmen's Ranch, LLP*, 271 P.3d 562, 75 U.C.C. Rep. Serv. 2d 909 (Colo. App. 2011); *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003).
- 19 *In re Simpson*, 474 B.R. 656, 78 U.C.C. Rep. Serv. 2d 48 (Bankr. S.D. Ind. 2012) (Ind. law); *In re Flamingo 55, Inc.*, 378 B.R. 893 (Bankr. D. Nev. 2007), *aff'd* as modified on other grounds, 646 F.3d 1253 (9th Cir. 2011) (Calif. law); *In re Heritage Organization, L.L.C.*, 354 B.R. 407, 61 U.C.C. Rep. Serv. 2d 952 (Bankr. N.D. Tex. 2006).
- An accommodation party must establish that it was not the direct beneficiary of the proceeds of the note, a difficult task because there is no formula to distinguish between a "direct" and "indirect" benefit. *In re TML, Inc.*, 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003).
- 20 *Citibank (Arizona) v. Van Velzer*, 194 Ariz. 358, 982 P.2d 833, 36 U.C.C. Rep. Serv. 2d 145 (Ct. App. Div. 2 1998); *Sack Lumber Co. v. Goosic*, 15 Neb. App. 529, 732 N.W.2d 690 (2007).
- The receipt of a benefit does not preclude a party from being an accommodation party to an instrument, provided the accommodation party does not receive the primary benefit from the instrument. *Cliff Findlay Automotive, LLC v. Olson*, 228 Ariz. 115, 263 P.3d 664, 75 U.C.C. Rep. Serv. 2d 636 (Ct. App. Div. 1 2011).
- A party signing a note solely for the benefit of another party, and without receiving any direct benefit, is an "accommodation party." *Irish v. Woods*, 864 N.E.2d 1117, 62 U.C.C. Rep. Serv. 2d 607 (Ind. Ct. App. 2007).
- A signing party who does not directly benefit from the note is likely to be held to be an accommodation maker. *Cranfill v. Union Planters Bank, N.A.*, 86 Ark. App. 1, 158 S.W.3d 703, 53 U.C.C. Rep. Serv. 2d 287 (2004); *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 21 *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 22 *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829 (Ky. Ct. App. 2000).
- 23 *Board of County Com'ns of County of Park v. Park County Sportsmen's Ranch, LLP*, 271 P.3d 562, 75 U.C.C. Rep. Serv. 2d 909 (Colo. App. 2011).

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11 Am. Jur. 2d Bills and Notes § 70

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Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

C. Parties to Bills and Notes

3. Guarantors, Accommodation Parties, and Indorsers of Bills and Notes

§ 70. Status as accommodation party to instrument—Capacity as signer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  49, 122

Trial Strategy

[Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283](#)

Article 3 of the Uniform Commercial Code (UCC) provides that an accommodation party may sign in any capacity—as maker, drawer, acceptor, or indorser.¹ The nature of the liabilities of an accommodation party is determined by the capacity in which the party signed.² An accommodation party may be a borrower or a maker,³ and the fact that a party signs as a principal, maker,⁴ or comaker does not preclude the party's status as an accommodation maker,⁵ although a party cannot be an accommodation maker with respect to the party's own debt.⁶ That a party signed an instrument as a buyer does not preclude status as an accommodation party.⁷ A party signing only in a representative capacity cannot be considered an accommodation party individually.⁸

If accommodation maker status is not readily apparent from the face of the note itself, parol evidence is admissible to establish the intentions of those concerned.⁹

Except as provided otherwise in the U.C.C. for guarantees of collection,¹⁰ the accommodation party is obliged to pay the instrument in the capacity in which the accommodation party signs; the obligation of the accommodation party may be enforced

notwithstanding any statute of frauds, and regardless of whether the accommodation party receives any consideration for the accommodation.¹¹ Thus, the accommodation party is liable to the note holder according to the capacity in which it signed, without regard to the fact that, with respect to the accommodated party, the accommodation party has surety status.¹²

When a cosigner is an accommodation maker, rather than an accommodation indorser, because the note states that the cosigner is equally liable and does not specify that the cosigner retained rights as a surety, the cosigner is liable on the note without regard to the holder's delay in seeking payment prior to the maker's bankruptcy.¹³

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Footnotes

- 1 U.C.C. § 3-419(b).
- 2 *Keesling v. T.E.K. Partners, LLC*, 861 N.E.2d 1246 (Ind. Ct. App. 2007).
- 3 *In re Clore*, 547 B.R. 915 (Bankr. C.D. Ill. 2016) (Ill. Law); *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law).
- 4 *Citibank (Arizona) v. Van Velzer*, 194 Ariz. 358, 982 P.2d 833, 36 U.C.C. Rep. Serv. 2d 145 (Ct. App. Div. 2 1998).
A maker may be an accommodation party. *Whisnant v. Carolina Farm Credit*, 204 N.C. App. 84, 693 S.E.2d 149, 72 U.C.C. Rep. Serv. 2d 301 (2010); *Glimcher v. Reinhorn*, 68 Ohio App. 3d 131, 587 N.E.2d 462, 18 U.C.C. Rep. Serv. 2d 511 (10th Dist. Franklin County 1991).
- 5 *In re TML, Inc.*, 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003) (Mich. law); *Whisnant v. Carolina Farm Credit*, 204 N.C. App. 84, 693 S.E.2d 149, 72 U.C.C. Rep. Serv. 2d 301 (2010); *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
A maker was not an accommodation party when nothing in the notes demonstrated that the maker was accommodating a comaker, and the proceeds were used for makers' jointly operated business. *Glimcher v. Reinhorn*, 68 Ohio App. 3d 131, 587 N.E.2d 462, 18 U.C.C. Rep. Serv. 2d 511 (10th Dist. Franklin County 1991).
- 6 *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 7 *Cliff Findlay Automotive, LLC v. Olson*, 228 Ariz. 115, 263 P.3d 664, 75 U.C.C. Rep. Serv. 2d 636 (Ct. App. Div. 1 2011).
- 8 *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 9 *Belden v. Thorkildsen*, 2008 WY 145, 197 P.3d 148, 67 U.C.C. Rep. Serv. 2d 549 (Wyo. 2008).
- 10 § 438.
- 11 U.C.C. § 3-419(b).
- 12 *In re TML, Inc.*, 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003).
- 13 *Federal Financial Co. v. Landers*, 169 Vt. 570, 740 A.2d 345, 40 U.C.C. Rep. Serv. 2d 772 (1999).

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11 Am. Jur. 2d Bills and Notes § 71

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Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

C. Parties to Bills and Notes

3. Guarantors, Accommodation Parties, and Indorsers of Bills and Notes

§ 71. Status as accommodation party to instrument—Presumption and notice

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

Trial Strategy

[Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283](#)

Article 3 of the Uniform Commercial Code (UCC) provides that a person signing an instrument is presumed to be an accommodation party, and there is notice that the instrument is signed for accommodation, if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument.¹

If there is an anomalous endorsement there is a rebuttable presumption that the endorsing party is an accommodating party, but the failure to have an anomalous endorsement does not create a presumption that the party is not an accommodation party.²

One is presumptively an accommodation party if the contract contains "words indicating that the signer is acting as a surety or guarantor with respect to the obligation of another party to the instrument."³ A person who signed a promissory note under the heading "GUARANTORS (individually)" was an accommodation party.⁴

An endorsement outside chain of title demonstrates accommodation status without the need for additional words and provides notice to subsequent parties.⁵

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Footnotes

- 1 U.C.C. § 3-419(c).
As to the liability of guarantors of negotiable instruments, generally, see § 435.
- 2 *Cliff Findlay Automotive, LLC v. Olson*, 228 Ariz. 115, 263 P.3d 664, 75 U.C.C. Rep. Serv. 2d 636 (Ct. App. Div. 1 2011).
- 3 *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law).
- 4 *Venaglia v. Kropinak*, 125 N.M. 25, 1998-NMCA-043, 956 P.2d 824, 35 U.C.C. Rep. Serv. 2d 556 (Ct. App. 1998).
- 5 *Glimcher v. Reinhorn*, 68 Ohio App. 3d 131, 587 N.E.2d 462, 18 U.C.C. Rep. Serv. 2d 511 (10th Dist. Franklin County 1991).

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11 Am. Jur. 2d Bills and Notes § 72

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Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

C. Parties to Bills and Notes

3. Guarantors, Accommodation Parties, and Indorsers of Bills and Notes

§ 72. Rights of accommodation party against accommodated party

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

Trial Strategy

[Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283](#)

Article 3 of the Uniform Commercial Code (UCC) provides that an accommodation party who pays the instrument is entitled to reimbursement from the accommodated party, and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief requiring that the accommodated party perform its obligations on the instrument.¹ An accommodation party has a surety's right of recourse against the maker² and is subrogated to the rights of the payee as against the accommodated party.³

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Footnotes

- ¹ U.C.C. § 3-419(f).
- ² *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003).
- ³ *In re Rust*, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (Ohio law).

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§ 73. Status of accommodated party to instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

Trial Strategy

[Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283](#)

The accommodated party is a party to the instrument,¹ and may be the party principally responsible for payment,² although the payee of a note may be the accommodated party.³ The question of a party's status as an accommodated party is determined by the parties' intent.⁴ The maker of a note is not an accommodation party if the person allegedly accommodated is not a party to the paper,⁵ although there is some authority that because the concept of an accommodation party is given a broad interpretation, it may not necessarily require that the accommodated party be an actual party to the note or instrument itself.⁶

An accommodated party that pays the instrument does not have a right of recourse against, and is not entitled to contribution from, an accommodation party.⁷

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Footnotes

1 U.C.C. § 3-419(a).
2 Bixenstine v. Palacios, 805 S.W.2d 889 (Tex. App. Corpus Christi 1991).
3 Gehrig v. Ray, 332 So. 2d 703, 19 U.C.C. Rep. Serv. 886 (Fla. 1st DCA 1976); T. W. Sommer Co. v. Modern
Door & Lumber Co., 293 Minn. 264, 198 N.W.2d 278, 10 U.C.C. Rep. Serv. 1197 (1972).
4 Barylak v. Jordan, 156 Ga. App. 508, 274 S.E.2d 846 (1980).
5 Bank of America v. Superior Court, 4 Cal. App. 3d 435, 84 Cal. Rptr. 421, 7 U.C.C. Rep. Serv. 713 (4th
Dist. 1970); First Nat. Bank of North Idaho, N.A. v. Burgess, 118 Idaho 627, 798 P.2d 472, 13 U.C.C. Rep.
Serv. 2d 440 (Ct. App. 1990); McIntosh v. White, 447 S.W.2d 75, 7 U.C.C. Rep. Serv. 208 (Mo. Ct. App.
1969); Blakely v. Schulz, 257 Or. 527, 480 P.2d 428, 8 U.C.C. Rep. Serv. 1044 (1971); Bucks County Bank
& Trust Co. v. DeGroot, 226 Pa. Super. 419, 313 A.2d 357, 14 U.C.C. Rep. Serv. 155 (1973).
6 Scott v. Citizens Bank of Americus, 188 Ga. App. 618, 373 S.E.2d 633, 8 U.C.C. Rep. Serv. 2d 68 (1988).
7 U.C.C. § 3-419(f).

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§ 74. Status of indorsers of instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

The provisions of Article 3 of the Uniform Commercial Code (UCC) dealing with the transfer and negotiation of instruments refer to the “indorsement” of an instrument by an indorser.¹ An “indorser” is one who makes an indorsement,² defined as a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring the indorser's liability on the instrument.³ An indorser must have signed the instrument.⁴

An indorser bears some resemblance to a guarantor or surety, but the indorser's contract and liability are distinct from those of accommodation parties, and generally the liability of an indorser is secondary and conditional to a certain degree.⁵ If a note, on its face, does not contain a promise by a corporate official to pay the debt, the official, who signed the note in an individual as well as in a corporate capacity, could only be considered an indorser, not a maker of the note.⁶

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Footnotes

- 1 §§ 190 et seq.
- 2 U.C.C. § 3-204(b).
- 3 U.C.C. § 3-204(a).
- 4 *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829 (Ky. Ct. App. 2000).
- 5 §§ 409 et seq.

6 [Fred Shearer & Sons, Inc. v. Prendergast, 152 Or. App. 657, 955 P.2d 324, 35 U.C.C. Rep. Serv. 2d 196 \(1998\).](#)

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Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes  [30](#), [44](#), [132](#), [148.1](#), [149](#), [152](#), [164](#) to [166](#)

A.L.R. Library

A.L.R. Index, Bills and Notes

A.L.R. Index, Uniform Commercial Code

West's A.L.R. Digest, Bills and Notes  [30](#), [44](#), [132](#), [148.1](#), [149](#), [152](#), [164](#) to [166](#)

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11 Am. Jur. 2d Bills and Notes § 75

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§ 75. Definition and nature of promise or order to pay in instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 30

Article 3 of the Uniform Commercial Code (UCC) provides that, to be a negotiable instrument,¹ an instrument must contain an unconditional promise or order to pay.² A promise is a written undertaking to pay money signed by the person undertaking to pay, and an acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.³ An order is a written instruction to pay money signed by the person giving the instruction; it may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession, and an authorization to pay is not an order unless the person authorized to pay is also instructed to pay.⁴

Comment:

An I.O.U. or other written acknowledgment of indebtedness is not a note, unless there is also an undertaking to pay the obligation.⁵

The requisite promise to pay is a distinct agreement;⁶ an express promise to pay suffices,⁷ and absent an express promise to pay stated in the document, there is no valid enforceable promise to pay provided by the document; a mere anticipation of payment is insufficient.⁸ A mere voluntary and executory promise, stating only that the promisor owes the promisee a debt, without terms

stating a promise to pay, is insufficient.⁹ The acknowledgement of a preexisting debt is not, in itself, a promise to pay.¹⁰ Even so, an instrument may meet the statutory requirement that it contain a promise or order while lacking either the word “promise” or the word “order.”¹¹ The word “promise” does not have to be used ritualistically to confect a promissory note; instead, words “to be paid on demand” are sufficient.¹²

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Footnotes

- 1 § 7.
- 2 § 76.
- 3 U.C.C. § 3-103(a)(12).
As to words of negotiability required, see § 37.
- 4 U.C.C. § 3-103(a)(8).
- 5 U.C.C. § 3-103, Official Comment 3.
- 6 *Bank of New York Mellon v. Reyes*, 126 So. 3d 304 (Fla. 3d DCA 2013).
- 7 *Ward v. Stanford*, 443 S.W.3d 334, 84 U.C.C. Rep. Serv. 2d 352 (Tex. App. Dallas 2014).
- 8 *Wilkshire Communications, Inc. v. Hollinger-Yohe Ins. Agency Inc.*, 2016-Ohio-357, 2016 WL 528945 (Ohio Ct. App. 5th Dist. Tuscarawas County 2016).
- 9 *Beitner v. Becker*, 34 A.D.3d 406, 824 N.Y.S.2d 155 (2d Dep’t 2006).
- 10 *Burke v. Arnold*, 836 S.W.2d 99 (Tenn. Ct. App. 1991).
- 11 *People v. Dempster*, 51 Mich. App. 612, 216 N.W.2d 81, 14 U.C.C. Rep. Serv. 727 (1974), judgment rev’d on other grounds, 396 Mich. 700, 242 N.W.2d 381, 19 U.C.C. Rep. Serv. 845, 84 A.L.R.3d 562 (1976).
The words “promise to pay” are not essential in a certificate of deposit, where the instrument acknowledges receipt of a deposit and states a maturity date at which the obligation will become due. *In re Cambridge Biotech Corp.*, 178 B.R. 34, 25 U.C.C. Rep. Serv. 2d 1076 (Bankr. D. Mass. 1995).
The phrase “note to be paid back within 12 months” was more than a mere acknowledgment of a debt and constituted a written promise to pay, even though the word “promise” was not used in the instrument. *Smith v. Haran*, 273 Ill. App. 3d 866, 210 Ill. Dec. 191, 652 N.E.2d 1167, 28 U.C.C. Rep. Serv. 2d 1268 (1st Dist. 1995) (overruled on other grounds by, *Gunn v. Sobucki*, 216 Ill. 2d 602, 297 Ill. Dec. 414, 837 N.E.2d 865 (2005)).
- 12 *Smith v. McKeller*, 638 So. 2d 1192 (La. Ct. App. 1st Cir. 1994).

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§ 76. Unconditional promise or order to pay in instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  132, 148.1, 149, 164

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[Effect on negotiability of instrument, under terms of U.C.C. S 3-104\(1\), of statements expressly limiting negotiability or transferability, 58 A.L.R.4th 632](#)

[What constitutes unconditional promise to pay under Uniform Commercial Code sec. 3-104\(1\)\(b\), 88 A.L.R.3d 1100](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument contain an unconditional promise or order to pay,¹ a promise or order is unconditional unless it states an express condition to payment.² The instrument must contain an unconditional order³ or an unconditional promise to pay⁴ and not a promise subject to other conditions,⁵ other documents or records,⁶ or actions other than the payment.⁷ Negotiability is determined from the form and content of the instrument, and what is expressed in the instrument itself, without recourse to extraneous agreements or extrinsic facts.⁸

An instrument is not absolute and obligatory if subject to a condition that must first be performed,⁹ and is not negotiable if payment depends on a contingency that may never occur.¹⁰

Since a negotiable instrument circulates free of defects or conditions that are not apparent on its face, alleged conditions do not change a legally unconditional promise to pay appearing on the face of the instrument, so as to destroy its negotiability.¹¹

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Footnotes

- 1 U.C.C. § 3-104(a).
- 2 U.C.C. § 3-106(a)(i).
As to express conditions to payment, see § 78.
- 3 *Com. v. Pantalion*, 2008 PA Super 226, 957 A.2d 1267 (2008); *Great Northern Energy, Inc. v. Circle Ridge Production, Inc.*, 528 S.W.3d 644 (Tex. App. Texarkana 2017), review denied, (Sept. 8, 2017); *Arnold v. Palmer*, 224 W. Va. 495, 686 S.E.2d 725 (2009).
- 4 *Gray v. Suttell & Associates*, 123 F. Supp. 3d 1283 (E.D. Wash. 2015) (Wash. law); *Georg v. Metro Fixtures Contractors, Inc.*, 178 P.3d 1209, 66 U.C.C. Rep. Serv. 2d 477 (Colo. 2008); *Bridges v. Bore-Flex Industries, Inc.*, 531 S.W.3d 66, 93 U.C.C. Rep. Serv. 2d 643 (Mo. Ct. App. S.D. 2017), reh'g and/or transfer denied, (Sept. 15, 2017) and transfer denied, (Sept. 15, 2017) and transfer denied, (Nov. 21, 2017); *Com. v. Pantalion*, 2008 PA Super 226, 957 A.2d 1267 (2008); *Ward v. Stanford*, 443 S.W.3d 334, 84 U.C.C. Rep. Serv. 2d 352 (Tex. App. Dallas 2014); *Arnold v. Palmer*, 224 W. Va. 495, 686 S.E.2d 725 (2009).
- 5 *Dugan v. Vlcko*, 307 F. Supp. 3d 684, 95 U.C.C. Rep. Serv. 2d 623 (E.D. Mich. 2018) (Mich. law); *In re Dudley*, 502 B.R. 259 (Bankr. W.D. Va. 2013) (Mass. law).
- 6 §§ 79, 80.
- 7 *Stancik v. Hersch*, 2012-Ohio-1955, 2012 WL 1567213 (Ohio Ct. App. 8th Dist. Cuyahoga County 2012); *Jackson v. DeWitt*, 224 Wis. 2d 877, 592 N.W.2d 262 (Ct. App. 1999).
- 8 § 36.
- 9 *Martin v. Croft*, 294 Ga. App. 643, 669 S.E.2d 689 (2008).
- 10 *Sharif v. International Development Group Co., Ltd.*, 399 F.3d 857 (7th Cir. 2005).
A promissory note constituted an unconditional promise to pay, notwithstanding a contention that payment was conditioned on obtaining a particular loan by the payor, where the note was on a printed form containing the usual promise to pay without any indication that the obligation was contingent. *Demaio v. Theriot*, 343 So. 2d 1143, 21 U.C.C. Rep. Serv. 799 (La. Ct. App. 3d Cir. 1977), writ denied, 346 So. 2d 218 (La. 1977).
- 11 *Mecham v. United Bank of Ariz.*, 107 Ariz. 437, 489 P.2d 247, 9 U.C.C. Rep. Serv. 1070 (1971).

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§ 77. Inherently conditional documents; guaranty agreements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 132, 148.1

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ inherently conditional documents, such as letters of credit,² and guaranty agreements, are not negotiable instruments.³ A guaranty is, by its very nature, a promise to pay that is conditioned on the principal debtor's failure to pay the obligation.⁴

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Footnotes

- 1 § 76.
- 2 § 22.
- 3 *Pemstein v. Stimpson*, 36 Mass. App. Ct. 283, 630 N.E.2d 608, 23 U.C.C. Rep. Serv. 2d 877 (1994); *Haines Pipeline Const., Inc. v. Exline Gas Systems, Inc.*, 1996 OK CIV APP 75, 921 P.2d 955, 30 U.C.C. Rep. Serv. 2d 246 (Ct. App. Div. 3 1996).
- 4 *In re Colbert*, 128 B.R. 734, 16 U.C.C. Rep. Serv. 2d 381 (Bankr. W.D. Va. 1991); *Vesta State Bank v. Independent State Bank of Minnesota*, 506 N.W.2d 307 (Minn. Ct. App. 1993), *aff'd in part, rev'd in part on other grounds*, 518 N.W.2d 850, 24 U.C.C. Rep. Serv. 2d 553 (Minn. 1994); *Prime Financial Group, Inc. v. Smith*, 137 N.H. 74, 623 A.2d 757, 22 U.C.C. Rep. Serv. 2d 533 (1993); *Haines Pipeline Const., Inc. v. Exline Gas Systems, Inc.*, 1996 OK CIV APP 75, 921 P.2d 955, 30 U.C.C. Rep. Serv. 2d 246 (Ct. App. Div. 3 1996); *Guarantor Partners v. Huff*, 830 S.W.2d 73, 18 U.C.C. Rep. Serv. 2d 798 (Tenn. Ct. App. 1992).

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§ 78. Instrument subject to express condition to payment promise or order

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  44, 164

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ a promise or order must not state an express condition to payment.² If a written agreement makes the obligation to pay subject to an express condition, rather than payable on demand, it is not a negotiable instrument, and Article 3 does not apply to the transaction.³ However, purported conditions on an otherwise negotiable instrument that merely reflect other provisions of the law do not vitiate negotiability.⁴ Notices on an instrument that do not qualify the maker's obligation to pay do not affect negotiability, including—

- notices to the effect that the loan is not assumable without the approval of the Veterans Administration or its authorized agent⁵
- the addition of the words “Upon acceptance” in a draft drawn by an insurance company on itself, since the quoted words are merely a restatement of an implied or constructive condition of any draft or check⁶
- notice that a holder should touch the check to verify its authenticity, because it has heat sensitive ink and the logo should fade when touched, since this instruction does not represent a condition on the maker's undertaking, but presents an opportunity to examine the check's authenticity⁷
- that a check recites the consideration, since the payee is not bound to inquire whether the product stated as the consideration had been delivered⁸

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Footnotes

- 1 § 76.
- 2 U.C.C. § 3-106(a)(i).
As to the general preclusion of additional undertakings in the instrument, see § 94.
- 3 Fiscus v. Liberty Mortgage Corporation, 2014 COA 79, 373 P.3d 644, 83 U.C.C. Rep. Serv. 2d 1014 (Colo. App. 2014), aff'd on other grounds, 2016 CO 31, 379 P.3d 278, 89 U.C.C. Rep. Serv. 2d 815 (Colo. 2016).
A promissory note is rendered conditional, thus lacking negotiability, when it provides that the borrower will not be liable personally for payment in the event of default and limits recourse for payment to certain tangible property or other collateral. Apartment Inv. and Management Co. v. National Loan Investors, L.P., 258 Va. 322, 518 S.E.2d 627 (1999).
- 4 Triffin v. Dillabough, 552 Pa. 550, 716 A.2d 605, 36 U.C.C. Rep. Serv. 2d 255 (1998).
- 5 Matter of Ascot Mortg., Inc., 153 B.R. 1002, 20 U.C.C. Rep. Serv. 2d 976 (Bankr. N.D. Ga. 1993).
- 6 Canal Ins. Co. v. First Nat. Bank of Ft. Smith, 266 Ark. 1044, 596 S.W.2d 710, 27 U.C.C. Rep. Serv. 730 (Ct. App. 1979), decision aff'd, 268 Ark. 356, 596 S.W.2d 709, 28 U.C.C. Rep. Serv. 1063 (1980).
- 7 Triffin v. Pomerantz Staffing Services, LLC, 370 N.J. Super. 301, 851 A.2d 100, 53 U.C.C. Rep. Serv. 2d 927 (App. Div. 2004).
- 8 Strickland v. Kafko Mfg., Inc., 512 So. 2d 714, 4 U.C.C. Rep. Serv. 2d 1502 (Ala. 1987).

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§ 79. Instrument subject to other record for payment promise or order

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  44, 165

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ a promise or order is unconditional unless it states that it is subject to, or governed by, another record,² or that rights or obligations with respect to the promise or order are stated in another record.³ If another instrument must be examined in order to determine the rights and obligations under the note, it is not negotiable.⁴ This rule applies where the instrument was subject to other contracts, and a holder of the instrument would need to review them to determine the instrument's full terms, or determine whether payment is subject to conditions.⁵

Comment:

A promissory note is not a negotiable instrument if it contains any statement similar to the following examples: (1) This note is subject to a contract of sale dated ____ between the payee and maker of this note; (2) rights and obligations of the parties with respect to this note are stated in an agreement dated ____ between the payee and maker of this note.⁶

Footnotes

- 1 § 76.
- 2 U.C.C. § 3-106(a)(ii).
- 3 U.C.C. § 3-106(a)(iii).
 As to the definition of “record,” see § 4.
 As to the general preclusion of additional undertakings in the instrument, see § 94.
- 4 Ward v. Stanford, 443 S.W.3d 334, 84 U.C.C. Rep. Serv. 2d 352 (Tex. App. Dallas 2014).
 If another instrument must be examined in order to determine the fixed principal amount due, the sum is not certain or fixed as required for negotiability. *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260, 76 U.C.C. Rep. Serv. 2d 836 (2012).
 A note given by a limited partner to a partnership, which provided that it was subject to the terms of a partnership debt assumption agreement, was nonnegotiable. *Growth Equities Corp. v. Freed*, 227 Cal. App. 3d 506, 277 Cal. Rptr. 848, 13 U.C.C. Rep. Serv. 2d 1134 (1st Dist. 1991).
 A note containing a statement that the maker's obligation was subject to conditions recited in a bill of sale and covenant not to compete executed by the parties was not unconditional, and, therefore, not negotiable. *DBA Enterprises, Inc. v. Findlay*, 923 P.2d 298, 28 U.C.C. Rep. Serv. 2d 1297 (Colo. App. 1996).
 Notes given to pay for a partnership interest, which incorporated, by reference, an extrinsic agreement that stated conditions that must be met before the debt evidenced by the notes would become payable, were nonnegotiable instruments, because they did not contain an unconditional promise to pay. *Salomonsky v. Kelly*, 232 Va. 261, 349 S.E.2d 358, 2 U.C.C. Rep. Serv. 2d 939 (1986).
- 5 Massey Ferguson Credit Corp. v. Bice, 450 N.W.2d 435, 11 U.C.C. Rep. Serv. 2d 116 (S.D. 1990); *FFP Marketing Co., Inc. v. Long Lane Master Trust IV*, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex. App. Fort Worth 2005).
 A promissory note executed by a stock purchaser in favor of the seller contained only a conditional promise to pay, where it included another agreement to pay a share of profits if the value of the stock exceeded a certain percentage, and that value could not be determined without referring to a separate stock purchase agreement. *Sheppard v. Stanich*, 749 N.E.2d 609, 46 U.C.C. Rep. Serv. 2d 773 (Ind. Ct. App. 2001).
- 6 U.C.C. § 3-106, Official Comment 1.

11 Am. Jur. 2d Bills and Notes § 80

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§ 80. Instrument referring to another record for payment promise or order

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West's Key Number Digest

West's Key Number Digest, Bills and Notes 165, 166

Forms

Forms relating to references to other contracts, agreements or records, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code [[Westlaw®\(r\) Search Query](#)]

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ a reference to another record does not of itself make the promise or order conditional.² A promise or order is not made conditional by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration.³

Although a promissory note's negotiability may be destroyed if the note expressly incorporates a mortgage that contains terms that would limit transferability, this principle applies only if the note expressly incorporates the terms of the mortgage: it does not apply when the note merely references the mortgage.⁴ References in mortgage notes to the underlying mortgage and to the date of disbursement of loan proceeds do not affect the notes' negotiability, when the amount payable can be calculated within the four corners of each instrument.⁵ Obligations of the makers stated in a note to pay taxes and assessments on the property, furnish any mortgagee with insurance policies, and perform all agreements contained in any prior mortgage and in any note secured by a prior mortgage do not render the note nonnegotiable and are there to protect the collateral and secure payment of the debt.⁶ However, a note that indicated that all covenants and agreements in a separately referenced mortgage

“shall apply to this renewal note” was not an unconditional promise, since by indicating that all agreements and covenants in the mortgage applied to the note, the reference to the mortgage went beyond a reference to collateral for the note, making the note subject to the mortgage.⁷

The incorporation by reference into a note of an accompanying deed of trust or security agreement does not impair the negotiability of the instrument; mere liens securing payment of a debt do not affect the obligation to pay it.⁸ In contrast, a promissory note was not negotiable instrument when it stated that it was subject to the terms of a deed of trust and security agreement incorporated by reference, and that a default under the deed of trust and security agreement constituted default under the note.⁹

The mere fact that a negotiable instrument is attached to another document, as where a note is attached to a conditional sales agreement or similar instrument, does not affect the negotiability of the instrument.¹⁰ Thus, sight drafts are negotiable, even though they contain a reference to accompanying bills of lading.¹¹

While a mere reference in a note to a separate agreement or document out of which it arises does not affect the negotiability of the note,¹² if the note incorporates the terms of a separate agreement by reference in such a manner that the essential terms of the instrument cannot be ascertained from the face of the note itself, the promise to pay contained in the note is conditional and the note is not negotiable;¹³ thus, the effect on the instrument's negotiability depends on the nature of the reference.¹⁴ For instance, promissory notes are conditional, and not negotiable instruments, if they go beyond merely referencing a separate writing for information regarding rights and obligations with respect to collateral, by specifically incorporating other documents by reference.¹⁵

A promissory note which made reference to separate advancement agreement was not a negotiable instrument, since the note indicated that the advancement agreement contained additional terms, nothing in note indicated these additional terms related solely to permissible subjects of granting or preserving collateral or spelling out acceleration or prepayment rights, and a separate provision in the note referenced the security agreement.¹⁶

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Footnotes

- 1 § 76.
- 2 U.C.C. § 3-106(a).
As to the general preclusion of additional undertakings in the instrument, see § 94.
As to the definition of “record,” see § 4.
- 3 U.C.C. § 3-106(b)(i).
A note is not rendered nonnegotiable simply because it makes reference to another document concerning additional rights of the holder of the note. *First Federal Sav. & Loan Ass'n of Salt Lake City v. Gump & Ayers Real Estate, Inc.*, 771 P.2d 1096, 9 U.C.C. Rep. Serv. 2d 139 (Utah Ct. App. 1989).
Since a reference to the terms of a credit payment agreement in markers for gambling debts did not make payment conditional, the markers were negotiable instruments. *TeleRecovery of Louisiana, Inc. v. Gaulon*, 738 So. 2d 662, 38 U.C.C. Rep. Serv. 2d 853 (La. Ct. App. 5th Cir. 1999), writ denied, 751 So. 2d 224 (La. 1999).
- 4 *HSBC Bank USA, National Association v. Buset*, 241 So. 3d 882, 94 U.C.C. Rep. Serv. 2d 1156 (Fla. 3d DCA 2018), review dismissed, 2018 WL 3650261 (Fla. 2018), reinstatement denied, 2018 WL 4293366 (Fla. 2018).
- 5 *In re AppOnline.com, Inc.*, 285 B.R. 805, 49 U.C.C. Rep. Serv. 2d 531 (Bankr. E.D. N.Y. 2002), order aff'd, 321 B.R. 614 (E.D. N.Y. 2003), judgment aff'd, 128 Fed. Appx. 171 (2d Cir. 2004).
- 6 *Kelley v. McGrail*, 31 Conn. L. Rptr. 326, 2002 WL 241447 (Conn. Super. Ct. 2002).

- 7 Jackson v. Luellen Farms, Inc., 877 N.E.2d 848, 64 U.C.C. Rep. Serv. 2d 639 (Ind. Ct. App. 2007).
8 In re AppOnline.Com, Inc., 290 B.R. 1, 49 U.C.C. Rep. Serv. 2d 1241 (Bankr. E.D. N.Y. 2003).
9 Great Northern Energy, Inc. v. Circle Ridge Production, Inc., 528 S.W.3d 644 (Tex. App. Texarkana 2017),
review denied, (Sept. 8, 2017).
10 Mutual Finance Co. v. Martin, 63 So. 2d 649, 44 A.L.R.2d 1 (Fla. 1953).
11 Regent Corp., U.S.A. v. Azmat Bangladesh, Ltd., 253 A.D.2d 134, 686 N.Y.S.2d 24, 38 U.C.C. Rep. Serv.
2d 131 (1st Dep't 1999).
12 A.I. Trade Finance, Inc. v. Laminaciones de Lesaca, S.A., 41 F.3d 830, 25 U.C.C. Rep. Serv. 2d 461, 42
A.L.R.5th 771 (2d Cir. 1994).
13 § 79.
14 Booker v. Everhart, 294 N.C. 146, 240 S.E.2d 360, 24 U.C.C. Rep. Serv. 165 (1978).
15 FFP Marketing Co., Inc. v. Long Lane Master Trust IV, 169 S.W.3d 402, 58 U.C.C. Rep. Serv. 2d 855 (Tex.
App. Fort Worth 2005).
16 DZ Bank AG Deutsche Zentral-Genossenschaftsbank v. McCranie, 720 Fed. Appx. 576, 94 U.C.C. Rep.
Serv. 2d 798 (11th Cir. 2018).

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11 Am. Jur. 2d Bills and Notes § 81

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

D. Promise or Order to Pay in Bills and Notes

§ 81. Instrument providing for payment from particular fund or source

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 152

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ a promise or order is not made conditional because payment is limited to resort to a particular fund or source.²

An obligation will not be found to be conditional where it is clear that any reference in a note to a particular fund is not intended to make payment depend on the fund's adequacy.³ For instance, a distinction has been made between an instrument payable out of earnings, which is negotiable, and one conditioned on earnings, which is not.⁴

A promissory note is rendered conditional, thus lacking negotiability, when it provides that the borrower will not be liable personally for payment in the event of default, and limits recourse for payment to certain tangible property or other collateral.⁵

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Footnotes

¹ § 76.

² U.C.C. § 3-106(b)(ii).

A warrant issued by a governmental levee district directing the state comptroller to pay a construction company a fixed amount was a negotiable instrument, and the unconditional promise to pay contained in warrant was not made conditional by fact that the instrument was limited to payment from a particular fund or from the proceeds of a particular source. [St. James Bank & Trust Co. v. Board of Com'rs, Pontchartrain Levee Dist.](#), 354 So. 2d 233 (La. Ct. App. 4th Cir. 1978).

- 3 [DH Cattle Holdings Co. v. Smith](#), 195 A.D.2d 202, 607 N.Y.S.2d 227, 22 U.C.C. Rep. Serv. 2d 799 (1st
Dep't 1994).
- 4 [Rogers v. Willard](#), 453 So. 2d 1175, 39 U.C.C. Rep. Serv. 517 (Fla. 3d DCA 1984).
- 5 [Apartment Inv. and Management Co. v. National Loan Investors, L.P.](#), 258 Va. 322, 518 S.E.2d 627 (1999).
A nonrecourse promissory note has the effect of making a note payable out of a particular fund or source,
and the holder's rights are limited to proceeding against the property securing the note. [Fein v. R.P.H., Inc.](#),
68 S.W.3d 260 (Tex. App. Houston 14th Dist. 2002).

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11 Am. Jur. 2d Bills and Notes § 82

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D. Promise or Order to Pay in Bills and Notes

§ 82. Instrument requiring countersignature for payment promise or order

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 132

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ if a promise or order requires a countersignature by a person whose specimen signature appears on the promise or order, as a condition of payment, the condition does not make the promise or order conditional.²

Comment:

The foregoing provision applies to traveler's checks or other instruments that require a countersignature; although the requirement of a countersignature is a condition to the obligation to pay such instruments, traveler's checks are treated in the commercial world as money substitutes and therefore should be governed by Article 3.³

If the person whose specimen signature appears on the promise or order fails to countersign the instrument, that failure does not prevent a transferee of the instrument from becoming a holder of the instrument.⁴ Thus, traveler's checks become negotiable instruments at the time the purchaser first signs, and the countersignature is not needed for negotiability.⁵

Comment:

If a thief steals a traveler's check and cashes it by skillfully imitating the specimen signature, so that the countersignature appears to be authentic, the merchant or bank that cashed the traveler's check therefore becomes a holder when the check is taken, and the forged countersignature becomes a defense to the obligation of the issuer to pay the instrument.⁶

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Footnotes

- 1 § 76.
- 2 U.C.C. § 3-106(c).
- 3 U.C.C. § 3-106, Official Comment 2.
As to the status of traveler's checks, see § 33.
- 4 U.C.C. § 3-106(c).
- 5 Xanthopoulos v. Thomas Cook, Inc., 629 F. Supp. 164, 42 U.C.C. Rep. Serv. 883 (S.D. N.Y. 1985).
- 6 U.C.C. § 3-106, Official Comment 2.

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

D. Promise or Order to Pay in Bills and Notes

§ 83. Instrument stating preservation of defenses to payment promise or order

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 164

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that negotiable instruments contain an unconditional promise or order to pay,¹ if a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional; however, if the promise or order is an instrument, there cannot be a holder in due course of the instrument.²

Comment:

The foregoing provision applies only if the statement is required by a statutory or administrative law, a prime example of which is the Federal Trade Commission rule³ preserving consumers' claims and defenses in consumer credit sales.⁴

- 1 § 76.
- 2 U.C.C. § 3-106(d).
- 3 16 C.F.R. §§ 433.1 to 433.3.
- 4 U.C.C. § 3-106, Official Comment 3.

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Research References


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West's Key Number Digest, Bills and Notes  11, 39, 157 to 160

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A.L.R. Index, Bills and Notes

A.L.R. Index, Uniform Commercial Code

West's A.L.R. Digest, Bills and Notes  11, 39, 157 to 160

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§ 84. Requirement of fixed amount of money in promise or order to pay

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  11, 39, 157, 159

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[What constitutes “fixed amount of money” for purposes of \[rev\] s 3-104 of Uniform Commercial Code providing that negotiable instrument must contain unconditional promise to pay fixed amount of money, 76 A.L.R.5th 289](#)

[What constitutes “money” within meaning of Uniform Commercial Code, 40 A.L.R.4th 346](#)

Forms

Forms relating to note payable in exchange, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [\[Westlaw®\(r\) Search Query\]](#)

Article 3 of the Uniform Commercial Code (UCC) provides that, to be a negotiable instrument,¹ an instrument must contain a promise or order to pay a fixed amount of money,² requiring a sum certain, or certainty in the amount payable,³ and payment by money, rather than by the delivery of goods,⁴ the collection of insurance proceeds,⁵ or the extension of credit.⁶

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Footnotes

- 1 [§ 7.](#)
- 2 [U.C.C. § 3-104\(a\).](#)
As to the definition of money, see [§ 17.](#)
As to instruments payable in foreign money, see [§ 110.](#)
- 3 [§ 85.](#)
- 4 [Means v. Clardy, 735 S.W.2d 6, 5 U.C.C. Rep. Serv. 2d 119 \(Mo. Ct. App. W.D. 1987\).](#)
- 5 [Stancik v. Hersch, 2012-Ohio-1955, 2012 WL 1567213 \(Ohio Ct. App. 8th Dist. Cuyahoga County 2012\).](#)
- 6 [Society Bank, N.A. v. Kellar, 63 Ohio App. 3d 583, 579 N.E.2d 717 \(2d Dist. Montgomery County 1989\).](#)

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E. Fixed Amount of Money to Pay Under Bills and Notes

§ 85. Certainty of amount of money to be paid on promise or order

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  157, 160

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[What constitutes "fixed amount of money" for purposes of \[rev\] s 3-104 of Uniform Commercial Code providing that negotiable instrument must contain unconditional promise to pay fixed amount of money, 76 A.L.R.5th 289](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument contain a promise or order to pay a fixed amount of money,¹ except for interest,² and except as specifically provided with regard to instruments payable in foreign money,³ a fixed principal amount is an absolute requisite to negotiability, and the fixed amount generally must be determinable by reference to the instrument itself without any reference to any outside source; if reference to a separate instrument or extrinsic facts is needed to ascertain the principal due, the sum is not certain or fixed.⁴ The amount payable must be certain as to the sum,⁵ and definite.⁶

An instrument, such as a guaranty, which simply states the maximum amount of liability, is not negotiable.⁷

Under the rule that words generally prevail over numbers,⁸ if the amount payable under a note is expressed in words and also in figures and there is a discrepancy between the two, the amount denoted by words controls the determination of the amount of the instrument, unless the words are ambiguous.⁹

A note given to secure a line of credit under which the amount of the obligation varies, depending on the extent to which the line of credit is used, is not negotiable,¹⁰ as when it calls for monthly payments in unstated amounts and does not state any aggregate balance to be repaid,¹¹ or when the promise to pay includes the principal amount "or so much as may be outstanding," and is subject to requested advances to the borrower.¹²

Consumer credit debt does not qualify under the definition of a sum certain.¹³

The certainty of the amount payable is not affected by the fact that the note or other instrument calls for the payment of collection costs.¹⁴

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Footnotes

- 1 § 84.
- 2 § 86.
- 3 § 110.
- 4 [Heritage Bank v. Bruha](#), 283 Neb. 263, 812 N.W.2d 260, 76 U.C.C. Rep. Serv. 2d 836 (2012).
The fixed amount must be determined from the face of the instrument, without reference to information not contained in the note. [Bucci v. Northwest Trustee Services, Inc.](#), 197 Wash. App. 318, 387 P.3d 1139, 91 U.C.C. Rep. Serv. 2d 559 (Div. 1 2016), review denied, 188 Wash. 2d 1012, 394 P.3d 1011 (2017).
A restatement of an original promissory note in a renewal note does not require reference to the original note in determining the amount due. [Ward v. Stanford](#), 443 S.W.3d 334, 84 U.C.C. Rep. Serv. 2d 352 (Tex. App. Dallas 2014).
- 5 [Farouki v. Petra International Banking Corp.](#), 63 F. Supp. 3d 84, 84 U.C.C. Rep. Serv. 2d 341 (D.D.C. 2014), *aff'd*, 608 Fed. Appx. 8 (D.C. Cir. 2015) (D.C. law); [Dugan v. Vlcko](#), 307 F. Supp. 3d 684, 95 U.C.C. Rep. Serv. 2d 623 (E.D. Mich. 2018) (Mich. law); [Collins Financial Services v. Vigilante](#), 30 Misc. 3d 908, 915 N.Y.S.2d 912 (N.Y. City Civ. Ct. 2011); [Deutsche Bank Nat. Trust Co. v. Matthews](#), 2012 OK 14, 273 P.3d 43, 76 U.C.C. Rep. Serv. 2d 909 (Okla. 2012).
- 6 [Rodehorst v. Gartner](#), 266 Neb. 842, 669 N.W.2d 679, 51 U.C.C. Rep. Serv. 2d 604 (2003); [Branch Banking and Trust Co. v. Creasy](#), 301 N.C. 44, 269 S.E.2d 117, 30 U.C.C. Rep. Serv. 545 (1980); [Dann v. Team Bank](#), 788 S.W.2d 182, 12 U.C.C. Rep. Serv. 2d 452 (Tex. App. Dallas 1990).
- 7 [Rodehorst v. Gartner](#), 266 Neb. 842, 669 N.W.2d 679, 51 U.C.C. Rep. Serv. 2d 604 (2003); [Branch Banking and Trust Co. v. Creasy](#), 301 N.C. 44, 269 S.E.2d 117, 30 U.C.C. Rep. Serv. 545 (1980); [Dann v. Team Bank](#), 788 S.W.2d 182, 12 U.C.C. Rep. Serv. 2d 452 (Tex. App. Dallas 1990).
- 8 § 106.
- 9 [Yates v. Commercial Bank & Trust Co.](#), 432 So. 2d 725, 36 U.C.C. Rep. Serv. 205 (Fla. 3d DCA 1983); [Wall v. East Texas Teachers Credit Union](#), 526 S.W.2d 148 (Tex. Civ. App. Texarkana 1975), writ granted, (Nov. 5, 1975) and judgment *rev'd* on other grounds, 533 S.W.2d 918, 18 U.C.C. Rep. Serv. 984 (Tex. 1976).
A check written as part of a payday loan transaction was payable for a fixed amount of money, as required for the check to be a negotiable instrument, where an ambiguity in the amount of the check as stated in the words on it was clarified by the check's unambiguous numerical statement of the amount, which made it possible to determine the fixed amount of money payable to the order of the lender by referring only to the face of the check; in any event, a numerical amount of "587.50" identified on the check did not contradict the words, "five eighty-seven and 50/100 dollars," so as to trigger that statutory rule. *In re Blasco*, 352 B.R. 888, 61 U.C.C. Rep. Serv. 2d 142 (Bankr. N.D. Ala. 2006).
- 10 [Heritage Bank v. Bruha](#), 283 Neb. 263, 812 N.W.2d 260, 76 U.C.C. Rep. Serv. 2d 836 (2012).
- 11 [Cadle Co. v. Richardson](#), 597 So. 2d 1052 (La. Ct. App. 2d Cir. 1992); [Diversified Financial Systems, Inc. v. Hill, Heard, O'Neal, Gilstrap & Goetz, P.C.](#), 99 S.W.3d 349 (Tex. App. Fort Worth 2003) (multiple advances up to the maximum amount of credit).

- 12 [Heritage Bank v. Bruha](#), 283 Neb. 263, 812 N.W.2d 260, 76 U.C.C. Rep. Serv. 2d 836 (2012).
13 [Collins Financial Services v. Vigilante](#), 30 Misc. 3d 908, 915 N.Y.S.2d 912 (N.Y. City Civ. Ct. 2011).
14 [Bowman v. Kingsland Development, Inc.](#), 432 So. 2d 660 (Fla. 5th DCA 1983).
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11 Am. Jur. 2d Bills and Notes § 86

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E. Fixed Amount of Money to Pay Under Bills and Notes

§ 86. Interest payable within fixed amount requirement; variable rate provision

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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What constitutes “fixed amount of money” for purposes of [rev] s 3-104 of Uniform Commercial Code providing that negotiable instrument must contain unconditional promise to pay fixed amount of money, 76 A.L.R.5th 289

Forms

Forms relating to optional provisions—interest, generally, see Am. Jur. Legal Forms 2d, Bills and Notes [\[Westlaw®\(r\) Search Query\]](#)

Forms relating to provisions on interest, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument contain a promise or order to pay a fixed amount of money,¹ the fixed amount of money payable may be increased by the addition of interest or other charges that are stated in the instrument.² To that extent, the payment of interest is an exception to the requirement that

the fixed amount of payment under the instrument be determined from the face of the instrument.³ Interest may be stated in an instrument as a fixed or variable amount of money, or it may be expressed as a fixed or variable rate or rates; the amount or rate of interest may be stated or described in the instrument in any manner, and may require reference to information not contained in the instrument.⁴ Thus, a promissory note is negotiable, notwithstanding the fact that it contains an adjustable interest rate.⁵ A variable interest rate does not defeat negotiability,⁶ but must be tied to a readily ascertainable commercial or financial index.⁷ A note requiring interest at a bank's prime rate, but defining the bank as an individual person, does not base the calculation on any readily ascertainable, objective marketplace standard, and thus is not negotiable.⁸

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Footnotes

- 1 § 84.
- 2 U.C.C. § 3-104(a).
- 3 *Bucci v. Northwest Trustee Services, Inc.*, 197 Wash. App. 318, 387 P.3d 1139, 91 U.C.C. Rep. Serv. 2d 559 (Div. 1 2016), review denied, 188 Wash. 2d 1012, 394 P.3d 1011 (2017).
- 4 U.C.C. § 3-112(b).
- 5 *Thompson v. First Union Nat. Bank*, 643 So. 2d 1179 (Fla. 5th DCA 1994).
- 6 *In re McFadden*, 471 B.R. 136, 77 U.C.C. Rep. Serv. 2d 608 (Bankr. D. S.C. 2012) (S.C. law); *In re Rinaldi*, 487 B.R. 516 (Bankr. E.D. Wis. 2013) (Wis. law); *Cole v. Davis*, 2016 IL App (1st) 152716, 407 Ill. Dec. 514, 63 N.E.3d 946, 90 U.C.C. Rep. Serv. 2d 685 (App. Ct. 1st Dist. 2016); *Heritage Bank v. Bruha*, 283 Neb. 263, 812 N.W.2d 260, 76 U.C.C. Rep. Serv. 2d 836 (2012).
- 7 *Federal Deposit Ins. Corp. v. Hershiser Signature Properties*, 777 F. Supp. 539, 16 U.C.C. Rep. Serv. 2d 702 (E.D. Mich. 1991).
- 8 *Ingram v. Earthman*, 993 S.W.2d 611, 40 U.C.C. Rep. Serv. 2d 500 (Tenn. Ct. App. 1998).

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F. Time for Payment of Bills and Notes

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F. Time for Payment of Bills and Notes

§ 87. Requirement of fixed or definite time for payment under instrument

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West's Key Number Digest

West's Key Number Digest, Bills and Notes  129(1), 155

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[When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104\(a\) \(2\), 3-108\(a, b\) of Uniform Commercial Code, 71 A.L.R.5th 443](#)

Article 3 of the Uniform Commercial Code (UCC) provides that, to be a negotiable instrument,¹ a writing must be payable on demand or at a definite time.² A promissory note payable only on the occurrence of a future event is not payable either on demand or at a definite time and is not negotiable.³

Comment:

If an instrument is undated, but it is nonetheless made payable at a fixed time after its date, the instrument is incomplete; it may be completed by dating, however, so as to be payable at a definite time.⁴

If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date; if demand for payment is not made before that date, the instrument becomes payable at a definite time on the fixed date.⁵ An instrument that provides that the principal amount is due on demand or, if no demand is made, then on a fixed date, such as 180 days from the date of its execution, contains features of both a demand note and a note payable at a definite time,⁶ and becomes payable at a definite time if the lender did not demand payment prior to that fixed date.⁷

Reminder:

A debt on a promissory note becomes due on the note's maturity date.⁸

Practice Tip:

If a promissory note does not constitute a negotiable instrument, but nonetheless memorializes a debt between the parties that the obligor, through the obligor's signature, acknowledges an obligation to pay, the note is enforceable under traditional principles of contract law and is to be repaid in a reasonable time—when a contract does not specify time of performance, the law implies a reasonable time.⁹ Determining when a note containing a conditional term of repayment becomes payable requires the court to consider the obligor's ability to pay as a part of its determination of reasonableness, since the ability to pay is part of all the circumstances.¹⁰

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Footnotes

- 1 § 7.
- 2 U.C.C. § 3-104(a)(2).
For the nature and effect of instruments payable on demand, see § 88.
For the nature and effect of instruments payable at a certain or definite time, see § 89.
- 3 § 90.
- 4 U.C.C. § 3-109, Official Comment 3.
As to incomplete instruments, see § 99.
- 5 U.C.C. § 3-108(c).

- 6 Crown Mortg. Corp. v. Tarantino, 606 So. 2d 29, 19 U.C.C. Rep. Serv. 2d 805 (La. Ct. App. 5th Cir. 1992).
7 Fisher v. First Citizens Bank, 2000 MT 314, 302 Mont. 473, 14 P.3d 1228, 43 U.C.C. Rep. Serv. 2d 344
(2000).
8 In re Laurel Hill Paper Co., 393 B.R. 372 (Bankr. M.D. N.C. 2008) (N.C. law); Castle Rock Bank v. Team
Transit, LLC, 2012 COA 125, 292 P.3d 1077 (Colo. App. 2012).
9 Shlang v. Inbar, 149 A.D.3d 1402, 52 N.Y.S.3d 724 (3d Dep't 2017).
10 Smith v. Vaughn, 174 Ohio App. 3d 473, 2007-Ohio-7061, 882 N.E.2d 941, 64 U.C.C. Rep. Serv. 2d 757
(1st Dist. Hamilton County 2007).

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11 Am. Jur. 2d Bills and Notes § 88

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

II. Form, Provisions, Interpretation, and Operation of Bills and Notes

F. Time for Payment of Bills and Notes

§ 88. Nature and effect of instruments payable on demand

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  36, 129(1), 129(3), 155

A.L.R. Library

[When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104\(a\) \(2\), 3-108\(a, b\) of Uniform Commercial Code, 71 A.L.R.5th 443](#)

Forms

Forms relating to instruments payable on demand, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [\[Westlaw®\(r\) Search Query\]](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument must be payable on demand or at a definite time,¹ a promise or order is payable on demand if it (1) states that it is payable on demand or at sight, (2) otherwise indicates that it is payable at the will of the holder, or (3) does not state a time for payment.² A demand promissory

note is payable immediately on the date of its execution and delivery,³ without demand,⁴ and the right of action against the maker of a demand instrument accrues on its date, or, if no date is stated, as soon as it was issued.⁵

An instrument is payable on demand⁶ or immediately, if no time is fixed and no contingency specified on which payment is to be made,⁷ unless a statute declares otherwise or a contrary intention appears expressly or impliedly on the face of the instrument.⁸ An instrument that does not specify a day of payment is payable on demand and is construed as containing the equivalent words on its face.⁹ Undated promissory notes are not invalid, but are payable on demand.¹⁰

The date of maturity of a demand note, generally, is the date when demand for payment is made, and in the absence of any evidence concerning the date of demand, a court will assume that a demand was made on the same day that the note was executed.¹¹

Alteration of the date on a note does not affect the note's status as negotiable instrument, where the date was changed from the date it was signed to one year later, since in any event, it would have been a demand note due when it was executed, and thus the fact that the note was altered inured to the benefit of the debtor, who complained that the instrument was not payable at a definite time.¹²

The provision of the U.C.C. Article 1 requiring the exercise of good faith where acceleration of payment is at the option of the holder¹³ does not apply to demand notes, and the lender therefore does not have an obligation to show good faith before requesting payment.¹⁴ While a note permitting acceleration is negotiable, it is not a demand note.¹⁵ However, provisions in notes stating that they were payable on demand do not relieve a lender from its implied obligation of good faith, where the notes are not true demand instruments in that they call for payments over time, unless one of several specified events give the bank the right to accelerate payment.¹⁶

A promissory note that called for the borrower to repay "when you can" was not payable on demand, since it did not fail to identify a repayment date, and it was not a negotiable instrument.¹⁷

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Footnotes

- 1 § 87.
- 2 U.C.C. § 3-108(a).
- 3 Cedar West Owners Association v. Nationstar Mortgage, LLC, 7 Wash. App. 2d 473, 434 P.3d 554 (Div. 1 2019), review denied, 193 Wash. 2d 1016, 441 P.3d 1200 (2019).
A demand promissory note matures and is payable on the date of its execution. *Falk v. Fannie Mae*, 367 N.C. 594, 766 S.E.2d 271 (2014).
A demand loan note is due and payable on delivery. *Croghan Colonial Bank v. Lepley Farm Lines, Inc.*, 2011-Ohio-3493, 2011 WL 2739614 (Ohio Ct. App. 6th Dist. Huron County 2011).
The execution of a demand note constitutes an agreement that payment may be called at any time. *In re Szymanski*, 413 B.R. 232 (Bankr. E.D. Pa. 2009) (Del. and Pa. law).
- 4 *Boyd v. Bowen*, 145 Md. App. 635, 806 A.2d 314 (2002); *Croghan Colonial Bank v. Lepley Farm Lines, Inc.*, 2011-Ohio-3493, 2011 WL 2739614 (Ohio Ct. App. 6th Dist. Huron County 2011); *Edmundson v. Bank of America*, 194 Wash. App. 920, 378 P.3d 272 (Div. 1 2016).
- 5 Cedar West Owners Association v. Nationstar Mortgage, LLC, 7 Wash. App. 2d 473, 434 P.3d 554 (Div. 1 2019), review denied, 193 Wash. 2d 1016, 441 P.3d 1200 (2019).
- 6 *West v. Diduro*, 312 Ga. App. 591, 718 S.E.2d 815 (2011); *Bridges v. Bore-Flex Industries, Inc.*, 531 S.W.3d 66, 93 U.C.C. Rep. Serv. 2d 643 (Mo. Ct. App. S.D. 2017), reh'g and/or transfer denied, (Sept. 15, 2017)

and transfer denied, (Sept. 15, 2017) and transfer denied, (Nov. 21, 2017); *Wehle v. Moroczko*, 151 A.D.3d 1846, 57 N.Y.S.3d 322 (4th Dep't 2017); *Smith v. Vaughn*, 174 Ohio App. 3d 473, 2007-Ohio-7061, 882 N.E.2d 941, 64 U.C.C. Rep. Serv. 2d 757 (1st Dist. Hamilton County 2007).

Cedar West Owners Association v. Nationstar Mortgage, LLC, 7 Wash. App. 2d 473, 434 P.3d 554 (Div. 1 2019), review denied, 193 Wash. 2d 1016, 441 P.3d 1200 (2019).

An unconditional promissory note is payable on demand when it does not state any time of payment. *Bridges v. Bore-Flex Industries, Inc.*, 531 S.W.3d 66, 93 U.C.C. Rep. Serv. 2d 643 (Mo. Ct. App. S.D. 2017), reh'g and/or transfer denied, (Sept. 15, 2017) and transfer denied, (Sept. 15, 2017) and transfer denied, (Nov. 21, 2017); *Gallwitz v. Novel*, 2011-Ohio-297, 2011 WL 303253 (Ohio Ct. App. 5th Dist. Knox County 2011).

A promissory note payable "in full at any time or in part from time to time" with no additional requirements is negotiable and payable on demand. *Dugan v. Vlcko*, 307 F. Supp. 3d 684, 95 U.C.C. Rep. Serv. 2d 623 (E.D. Mich. 2018) (Mich. law).

Edmundson v. Bank of America, 194 Wash. App. 920, 378 P.3d 272 (Div. 1 2016).

Frost National Bank v. Burge, 29 S.W.3d 580 (Tex. App. Houston 14th Dist. 2000).

A check issued as part of payday loan transaction, which did not state any time of payment, was payable on demand, as required for it to be a negotiable instrument. *In re Blasco*, 352 B.R. 888, 61 U.C.C. Rep. Serv. 2d 142 (Bankr. N.D. Ala. 2006). A note that does not designate a time for payment or indicate that it is payable on demand, is presumed to be a demand instrument, in the absence of any indication that a payment date was mistakenly omitted. *Lakhaney v. Anzelone*, 788 F. Supp. 160, 18 U.C.C. Rep. Serv. 2d 191 (S.D. N.Y. 1992).

West v. Diduro, 312 Ga. App. 591, 718 S.E.2d 815 (2011).

Federal Deposit Ins. Corp. v. Thayer Ins. Agency, Inc., 780 F. Supp. 745 (D. Kan. 1991).

Waldron v. Delffs, 988 S.W.2d 182, 39 U.C.C. Rep. Serv. 2d 132 (Tenn. Ct. App. 1998).

U.C.C. § 1-309.

Reger Development, LLC v. National City Bank, 592 F.3d 759 (7th Cir. 2010), as amended, (Dec. 16, 2010) (Ill. law); *Louisiana AG Credit, PCA v. Livestock Producers, Inc.*, 954 So. 2d 883 (La. Ct. App. 2d Cir. 2007), writ denied, 963 So. 2d 1001 (La. 2007); *McDonald v. Rockland Trust Co.*, 59 Mass. App. Ct. 836, 798 N.E.2d 323, 52 U.C.C. Rep. Serv. 2d 516 (2003).

Good faith is not a necessary component of a holder's decision to collect the balance due on a demand note. *Shawmut Bank, N.A. v. Miller*, 415 Mass. 482, 614 N.E.2d 668, 21 U.C.C. Rep. Serv. 2d 13 (1993).

§ 93.

In re Martin Specialty Vehicles, Inc., 87 B.R. 752, 6 U.C.C. Rep. Serv. 2d 337 (Bankr. D. Mass. 1988), opinion rev'd on other grounds, 97 B.R. 721 (D. Mass. 1989).

As to provisions for acceleration of maturity, see § 93.

Smith v. Vaughn, 174 Ohio App. 3d 473, 2007-Ohio-7061, 882 N.E.2d 941, 64 U.C.C. Rep. Serv. 2d 757 (1st Dist. Hamilton County 2007).

11 Am. Jur. 2d Bills and Notes § 89

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

II. Form, Provisions, Interpretation, and Operation of Bills and Notes

F. Time for Payment of Bills and Notes

§ 89. Nature and effect of instruments payable at definite or certain time

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 155

A.L.R. Library

[When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104\(a\) \(2\), 3-108\(a, b\) of Uniform Commercial Code, 71 A.L.R.5th 443](#)

[Provision in draft or note directing payment “on acceptance” as affecting negotiability, 19 A.L.R.4th 1268](#)

Forms

Forms relating to payable at fixed or definite time, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [[Westlaw®\(r\) Search Query](#)]

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument must be payable on demand or at a definite time,¹ a promise or order is payable at a definite time if it is payable:²

- (1) on the elapse of a definite period after sight or acceptance or
- (2) at a fixed date or dates, or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event
- A change in the maturity of a note does not transform it into a demand instrument, so long as a fixed time for payment remains after the change.³

Comment:

If a definite time is not stated, the time of payment remains uncertain and the order or promise is not a negotiable instrument.⁴

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Footnotes

- 1 § 87.
- 2 U.C.C. § 3-108(b).
As to maturity of an instrument payable at a specified or fixed time, see §§ 162, 571.
A deed of trust note qualified as negotiable instrument, when made payable to order of original deed of trust lender at the time it was issued, and was thus payable at a definite time. *In re Smith*, 509 B.R. 260, 83 U.C.C. Rep. Serv. 2d 329 (Bankr. N.D. Cal. 2014) (Calif. law).
A promissory note was a negotiable instrument payable at a definite time under terms stating that it was payable at the close of business on a specific date. *Brisk v. Draf Industries, Inc.*, 2012-Ohio-1311, 77 U.C.C. Rep. Serv. 2d 276 (Ohio Ct. App. 10th Dist. Franklin County 2012).
A promissory note payable no more than three years after execution provided a definite time for repayment. *In re Bedrock Marketing, LLC*, 404 B.R. 929, 79 Fed. R. Evid. Serv. 597, 68 U.C.C. Rep. Serv. 2d 694 (Bankr. D. Utah 2009) (Utah law).
- 3 *Frost National Bank v. Burge*, 29 S.W.3d 580 (Tex. App. Houston 14th Dist. 2000).
- 4 U.C.C. § 3-108, Official Comment.

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11 Am. Jur. 2d Bills and Notes § 90

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Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

F. Time for Payment of Bills and Notes

§ 90. Nature and effect of instruments payable on or after specified event

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 129(3), 155

A.L.R. Library

[When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104\(a\) \(2\), 3-108\(a, b\) of Uniform Commercial Code, 71 A.L.R.5th 443](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument must be payable on demand or at a definite time,¹ a promise or order is payable at a definite time if it is payable if it is payable at a time or times readily ascertainable at the time the promise or order is issued.²

Comment:

This provision broadens former Section 3-109 somewhat by providing that a definite time includes a time readily ascertainable at the time the promise or order is issued.³

A promissory note that is payable only on the occurrence of a conditional future event, such as the acceptance of a loan commitment, is not payable either on demand or at a definite time, and is not negotiable.⁴

A promissory note that states that payment is due on the transfer or sale of property is not a negotiable instrument, since the maker's obligation to pay is expressly conditioned on that event.⁵

Observation:

It was settled under the former version that an instrument payable a fixed number of days after a future event, such as a shipment of goods,⁶ or when the payee of the note is granted possession of the subject property under a lease agreement, was not payable at a definite time and was not negotiable.⁷ A certificate of deposit, made the death of the certificate owner a condition of the payment of the proceeds to a beneficiary, was not a negotiable instrument,⁸ since although the death of the specified individual is certain to occur, the time of the occurrence is uncertain.⁹

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Footnotes

- 1 § 87.
- 2 U.C.C. § 3-108(b).
- 3 U.C.C. § 3-108, Official Comment.
- 4 *Barton v. Scott Hudgens Realty & Mortg., Inc.*, 136 Ga. App. 565, 222 S.E.2d 126, 18 U.C.C. Rep. Serv. 982 (1975); *Krajcir v. Egidi*, 305 Ill. App. 3d 613, 238 Ill. Dec. 813, 712 N.E.2d 917, 38 U.C.C. Rep. Serv. 2d 1213 (1st Dist. 1999) (note stated that it was due on the date of final endorsement of the loan from the Department of Housing and Urban Development; the court noted that the original, separate contract recognized that it would be void if funding were not received).
- 5 *Reid v. Pyle*, 51 P.3d 1064, 48 U.C.C. Rep. Serv. 2d 1066 (Colo. App. 2002).
As to the effect of a condition on payment, see § 78.
- 6 *Banco Portugues Do Atlantico v. Fonda Mfg. Corp.*, 31 A.D.2d 122, 295 N.Y.S.2d 701 (1st Dep't 1968), order aff'd, 26 N.Y.2d 642, 307 N.Y.S.2d 668, 255 N.E.2d 780 (1970).
- 7 *Schiffer v. United Grocers, Inc.*, 329 Or. 86, 989 P.2d 10, 38 U.C.C. Rep. Serv. 2d 1207 (1999).
- 8 *West Greeley Nat. Bank v. Wygant*, 650 P.2d 1339, 34 U.C.C. Rep. Serv. 589 (Colo. App. 1982).
- 9 *Rotert v. Faulkner*, 660 S.W.2d 463, 37 U.C.C. Rep. Serv. 1596 (Mo. Ct. App. S.D. 1983).

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11 Am. Jur. 2d Bills and Notes § 91

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

F. Time for Payment of Bills and Notes

§ 91. Installment payment instruments as fixed or definite time of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes  37, 129(2), 155

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[When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104\(a\) \(2\), 3-108\(a, b\) of Uniform Commercial Code, 71 A.L.R.5th 443](#)

Forms

Forms relating to notes payable in installments or with payment schedule, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [\[Westlaw®\(r\) Search Query\]](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument must be payable on demand or at a definite time,¹ the provision for monthly installments in payment of a promissory note does not defeat enforcement of the instrument for lack of definite payment terms,² and does not destroy the demand nature of a note.³ A note that states that payment is due on demand, but that if no demand is made, monthly payments are to be made, is a demand note.⁴

The date of payment is definite where a note specifies that the balance is payable in a stated number of monthly installments, since any reasonable interpretation would indicate that the subsequent monthly payments would be due one month apart, starting on the indicated date.⁵

A note that states that it is payable in installments, but the date when the first installment is to be made is left blank, is regarded as payable on demand.⁶ The absence of installment due dates merely creates a demand note for the face amount of the note and does not render the note unenforceable due to incompleteness.⁷

A promissory note is a negotiable instrument when made payable to holder or the order of the holder and is made payable at definite times following an installment schedule with a specified final payment date.⁸ While a note that states a definite schedule for payment is not a demand note, it is payable at a definite time.⁹

A promissory note was an “installment note,” not a “demand note,” where it did not state that it was payable on demand, at sight, or at the will of the holder, and did specify the time of repayment.¹⁰

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Footnotes

- 1 § 87.
- 2 [Parker v. Parker](#), 2017 Ark. App. 242, 520 S.W.3d 693 (2017).
- 3 [Louisiana AG Credit, PCA v. Livestock Producers, Inc.](#), 954 So. 2d 883 (La. Ct. App. 2d Cir. 2007), writ denied, 963 So. 2d 1001 (La. 2007).
- 4 [Blanchard v. Progressive Bank & Trust Co.](#), 413 So. 2d 589, 33 U.C.C. Rep. Serv. 1387 (La. Ct. App. 1st Cir. 1982).
- 5 [Standard Premium Plan Corp. v. Hirschorn](#), 56 Misc. 2d 687, 290 N.Y.S.2d 226, 5 U.C.C. Rep. Serv. 163 (N.Y. City Civ. Ct. 1968).
- 6 [Sapin v. Security First Nat. Bank](#), 243 Cal. App. 2d 201, 52 Cal. Rptr. 254 (2d Dist. 1966).
A promissory note that required payments in monthly installments beginning several months before the note was executed was a “demand note” and did not become overdue until the day after a demand was made or the note remained outstanding for an unreasonably long time, since, due to the error in the payment dates, the note was effectively a note that stated no date of payment. [Gowin v. Granite Depot, LLC](#), 272 Va. 246, 634 S.E.2d 714, 60 U.C.C. Rep. Serv. 2d 1234 (2006).
- 7 [Petrey v. Brinsfield](#), 194 Ga. App. 863, 392 S.E.2d 51 (1990).
- 8 [Florian v. Lenge](#), 91 Conn. App. 268, 880 A.2d 985, 58 U.C.C. Rep. Serv. 2d 898 (2005).
- 9 [Corbin Deposit & Trust Co. v. Mullins Enterprises, Inc.](#), 641 S.W.2d 760, 34 U.C.C. Rep. Serv. 1201 (Ky. Ct. App. 1982).
- 10 [Hemar Ins. Corp. of America v. Ryerson](#), 108 S.W.3d 90, 50 U.C.C. Rep. Serv. 2d 1147 (Mo. Ct. App. E.D. 2003).

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11 Am. Jur. 2d Bills and Notes § 92

American Jurisprudence, Second Edition | May 2021 Update

Bills and Notes

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II. Form, Provisions, Interpretation, and Operation of Bills and Notes

F. Time for Payment of Bills and Notes

§ 92. Extension of payment provisions under instrument

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Bills and Notes 155

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[When is instrument “payable on demand or at a definite time” as required to constitute negotiable instrument under ss3-104\(a\)\(2\), 3-108\(a, b\) of Uniform Commercial Code, 71 A.L.R.5th 443](#)

Forms

Forms relating to terms used in negotiable instruments- provision for extension, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code[\[Westlaw®\(r\): Search Query\]](#)

Forms relating to pleadings for extended time for payment, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [\[Westlaw®\(r\) Search Query\]](#)

Under the requirement of Article 3 of the Uniform Commercial Code (UCC) that a negotiable instrument must be payable on demand or at a definite time,¹ an instrument is payable at a definite time, even though the date for payment may be extended at

the option of the holder.² The fact that the holder allows the obligor additional time in which to find other financing does not constitute an extension if no consideration is given and a definite time is not specified.³

If the extension is to be at the option of the maker or acceptor, or is to be automatic, a definite time limit must be stated.⁴ For example, a collateral note securing an assignor's obligation to a bank, made in conjunction with a purchase agreement, was not on its face "payable at definite time," so as to on that basis be negotiable, when the renegotiation clause enabled the maker to negotiate an extension of up to 84 months after the date of closing on the purchase and the note did not state a date of closing.⁵

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Footnotes

- 1 § 87.
- 2 U.C.C. § 3-108(b)(iii).
As to mutual extensions, renewals, and modifications of instruments, see § 168.
- 3 Haygood v. First Nat. Bank of New Albany, 517 So. 2d 553 (Miss. 1987).
- 4 U.C.C. § 3-108(b)(iv).
A note that was due on a specified date, subject to the maker's option to extend it for up to four years, and which otherwise met the requirements of negotiability, was a negotiable instrument. [Cartwright v. MBank Corpus Christi, N.A.](#), 865 S.W.2d 546 (Tex. App. Corpus Christi 1993), writ denied, (May 4, 1994).
- 5 Northern Bank v. Pefferoni Pizza Co., 252 Neb. 321, 562 N.W.2d 374, 32 U.C.C. Rep. Serv. 2d 866, 71 A.L.R.5th 769 (1997).

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12 Am. Jur. 2d Boats and Boating Summary

American Jurisprudence, Second Edition | May 2021 Update

Boats and Boating

Sonja Larsen, J.D.

[Correlation Table](#)

Summary

Scope:

This article is concerned with the law relating to pleasure boats of all kinds and types and certain other comparable small craft. It discusses federal, state, and local regulation of such boats, and the rights and liabilities connected with or growing out of their ownership and operation, including boating rights on inland lakes; nuisances; mortgages and liens; liability of motorboat owners and operators for injuries; liability for injuries to, or by, nonpower boats; liability of boat livery and resort operators for boating injuries; liability of municipal corporations for boating injuries in parks and other public places; liability of manufacturers and sellers for defects in boats; and liability of bailees for damage to boats during a bailment. In addition, the offense of boating while intoxicated is discussed.

Several federal laws regulating vessels are discussed as they are applied to pleasure boats, including provisions relating to criminal penalties for misconduct or negligent conduct of ship officers; navigation rules for harbors, rivers and inland waters; Coast Guard auxiliary vessels; reciprocal exemption of foreign yachts from charges and tonnage taxes; limitation of a vessel's owner's liability for loss, damage or injury; and ship mortgages and liens for ship repair and supply. Also, under federal law, a "recreational vessel" (as defined by [46 U.S.C.A. § 2101\(34\)](#)) is not among the categories of vessels made subject to Coast Guard inspection.

Treated Elsewhere:

Admiralty, see [Am. Jur. 2d, Admiralty §§ 1 et seq.](#)

Jones Act, recovery for injury or death of seaman under, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 29 et seq.](#)

Marine insurance policies, risks and coverage under, see [Am. Jur. 2d, Insurance §§ 637 to 645](#)

Products liability, generally, see [Am. Jur. 2d, Products Liability §§ 1 et seq.](#)

Public water supply, prohibition of boating to protect, see [Am. Jur. 2d, Waterworks and Water Companies § 33](#)

Salvage, see [Am. Jur. 2d, Salvage §§ 1 et seq.](#)

Taxation by state or municipality of business of shipping or carriage by water, see [Am. Jur. 2d, State and Local Taxation §§ 337 to 339](#)

Transportation of persons or property by ships or vessels, see [Am. Jur. 2d, Shipping §§ 1 et seq.](#)

Waters, watercourses, bodies and accumulations of water, and water rights, see [Am. Jur. 2d, Waters §§ 1 et seq.](#)

Wharves, piers, and docks, see [Am. Jur. 2d, Wharves §§ 1 et seq.](#)

Zoning laws pertinent to boathouses, boat trailers, boatyards, and marinas, see [Am. Jur. 2d, Zoning and Planning §§ 1 et seq.](#)

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12 Am. Jur. 2d Bonds Summary

American Jurisprudence, Second Edition | May 2021 Update

Bonds

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[Correlation Table](#)

Summary

Scope:

This article discusses general principles of bonds variously known as penal bonds, indemnity bonds, and official bonds. It covers bonds given pursuant to statute and private bonds, as well as single and conditional bonds. It discusses the nature, requisites, validity, and the incidents of such bonds; their construction, operation, and effect, and the rights, remedies, and liabilities of the parties thereto. Also treated are general principles relating to investment bonds and suits thereon.

Treated Elsewhere:

Bonds given for particular purposes or in particular transactions, see various articles throughout Am. Jur. 2d, for example, [Am. Jur. 2d, Admiralty §§ 1 et seq.](#); [Am. Jur. 2d, Appellate Review §§ 1 et seq.](#); [Am. Jur. 2d, Attachment and Garnishment §§ 1 et seq.](#); [Am. Jur. 2d, Bail and Recognizance §§ 1 et seq.](#); [Am. Jur. 2d, Costs §§ 1 et seq.](#); [Am. Jur. 2d, Executions and Enforcement of Judgments §§ 1 et seq.](#); [Am. Jur. 2d, Executors and Administrators §§ 1 et seq.](#); [Am. Jur. 2d, Federal Courts §§ 1 et seq.](#); [Am. Jur. 2d, Guardian and Ward §§ 1 et seq.](#); [Am. Jur. 2d, Licenses and Permits §§ 1 et seq.](#); [Am. Jur. 2d, Mechanics' Liens §§ 1 et seq.](#); [Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.](#); [Am. Jur. 2d, Replevin §§ 1 et seq.](#)

Contractors' bonds, see [Am. Jur. 2d, Contractors' Bonds §§ 1 et seq.](#)

Fidelity bonds, generally, see [Am. Jur. 2d, Fidelity Bonds and Insurance §§ 1 et seq.](#)

Guaranty contracts, generally, see [Am. Jur. 2d, Guaranty §§ 1 et seq.](#)

Indemnity, see [Am. Jur. 2d, Indemnity §§ 1 et seq.](#)

Investment bonds issues by corporate or government bodies, see [Am. Jur. 2d, Corporations §§ 1 et seq.](#); [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 1 et seq.](#); [Am. Jur. 2d, Public Securities and Obligations §§ 1 et seq.](#)

Negotiable instruments, generally, see [Am. Jur. 2d, Bills and Notes §§ 1 et seq.](#)

Negotiation and transfer of bonds, and rights of holders thereof, under Article 8 of the Uniform Commercial Code, see [Am. Jur. 2d, Commercial Code §§ 68 et seq.](#)

Securities regulation, see [Am. Jur. 2d, Securities Regulation—Federal §§ 1 et seq.](#); [Am. Jur. 2d, Securities Regulation—State §§ 1 et seq.](#)

Supersedeas bonds, see [Am. Jur. 2d, Appellate Review §§ 393 to 395](#)

Sureties, rights and obligations of in respect to bonds, see [Am. Jur. 2d, Suretyship §§ 1 et seq.](#)

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